Eszter Párkányi

INSTITUTIONAL CONTROL OF YOUTH CRIMINALITY IN EUROPEAN COMPARATIVE PERSPECTIVE

Doctoral dissertation

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Supervisor: Prof. Dr. Miklós Lévay
Head of Department, Department of Criminology

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[1]ADATLAP
a doktori értekezés nyilvánosságra hozatalához

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II. Nyilatkozatok

1. A doktori értekezés szerzőjeként[3]

a) hozzájárulok, hogy a doktori fokozat megszerzését követően a doktori értekezésem és a tézisek nyilvánosságra kerüljenek az ELTE Digitális Intézményi Tudástárban. Felhatalmazom az Állam- és Jogtudományi, Politikatudományi Doktori Tanács hivatalának ügyintézőjét, Dr. Kovács Mártát, hogy az értekezést és a téziseket feltöltse az ELTE Digitális Intézményi Tudástárba, és ennek során kitöltse a feltöltéshez szükséges nyilatkozatokat.

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a) az ELTE Digitális Intézményi Tudástárba feltöltendő doktori értekezés és a tézisek saját eredeti, önálló szellemi munkám és legjobb tudomásom szerint nem sértem vele senki szerzői jogait;

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3. A doktori értekezés szerzőjeként hozzájárulok a doktori értekezés és a tézisek szövegének plágiumkereső adatbázisba helyezéséhez és plágiumellenőrző vizsgálatok lefuttatásához.

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a doktori értekezés szerzőjének aláírása

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[2] A kari hivatal ügyintézője tölti ki.

[3] A megfelelő szöveg aláhúzandó.

[4] A doktori értekezés benyújtásával egyidejűleg be kell adni a tudományági doktori tanácshoz a szabadalmi, illetőleg oltalmi bejelentést tanúsító okiratot és a nyilvánosságra hozatal elhalasztása iránti kérelmet.

[5] A doktori értekezés benyújtásával egyidejűleg be kell nyújtani a minősített adatra vonatkozó közokiratot.

[6] A doktori értekezés benyújtásával egyidejűleg be kell nyújtani a mű kiadásáról szóló kiadói szerződést.

“Failing in life, marginalisation – far from what you were hoping for – is a powerful experience. The shame that falls on you like a thick curtain may result from an expectation handed down from generation to generation – I must cope at all cost. But who is it that casts a shadow on you when you already feel like you are diminishing? Is there shame in seeking help or shame in not giving it?”

(SOCCA, Encounters in social work, 2012)

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CONTENT

CHAPTER VI

CHAPTER VII

LIST OF ACRONYMS

ACRONYM	DEFINITION
AL	adolescence-limited
ABCPA	Anti-social Behaviour, Crime and Policing Act
AJB	Ombudsman of Fundamental Rights in Hungary (Alapvető Jogok Országgyűlési Biztosa)
AP	antisocial potential
ASBO	Anti-social Behaviour Order (England and Scotland)
CBO	Criminal Behaviour Order (England)
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture
DCI	Defence for Children International
DLC	developmental and life-course approach
ECtHR	European Court of Human Rights
ECHR	European Convention of Human Rights
EU	European Union
Halt	Het Alternatief (diversion programme in the Netherlands)
ICAP	Integrated Cognitive Antisocial Potential
ICCPR	International Covenant on Civil and Political Rights
IJJO	International Juvenile Justice Observatory
ISRD	International Self-Reported Delinquency Study
LCP	life-course persistent
MACR	minimum age of criminal responsibility
NGO	Non-governmental organisation
OPCAT	Optional Protocol to the Convention against Torture
PC	Penal Code
RSJ	Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands
SES	socio-economic status
SCRA	Scottish Children's Reporters Administration
YOI	Young Offender Institution (England and Scotland)
YOT	Youth Offending Team (England)
YPA	Youth Protection Act (Belgium)
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum
ZSM	Procedural alternative in the Netherlands: selective, fast, common, clever and community-based possible

INTRODUCTION

"Moving a little nearer to what we would otherwise never normally think of doing may be just what we need. And even learning what not to do can be useful, especially where this helps us to understand better why we make the sometimes hard choices we do."
(Nelken, 2009)

1. The motivation to pursue European comparative research

It has been a long journey from the first child saver movements (see e.g. Balogh, 1901; Platt, 1972), which began to promote (re)socialization of delinquent youth in the turn of the 19th to 20th century to the most recent directive of the European Union on procedural safeguards for children who are suspects or accused persons in criminal proceedings (see directive 2016/800 of the European Parliament and of the Council of 11 May 2016). The journey that began more than hundred years ago shows how the challenge of saving deprived delinquent children from a life of crime on the local level has grown to become the international ambition of creating binding rules, which aim to promote children's rights within the justice system. Of course, the approach on youth criminality did not develop independently from the evolution of global values, scientific discoveries and economic growth in the course of the past hundred years. The experience of the two World Wars shaped our approach on the rights that shall be granted for all human beings. In accordance with the development of rights, ideological movements have risen, which had great influence on how states perceived the rights of their citizens and which values they stood for and represented decades long. Along these values, governments created international structures of cooperation, and established a new method of preserving common values when they signed treaties on protecting human rights. Meanwhile scientific research assisted to re-establish our view on childhood when new discoveries have been published on brain development and maturation of children. Based on these discoveries methodologies used in medical context as well as by agencies of social support have been developed, influencing not only the professions', but also the society's approach on childhood and child-rearing, including the approach on deviance. The globalisation of human rights resulted in international treaties, standards, guidelines and other documents, which target the phenomenon of youth criminality, and the variety of successful methodologies and programmes which aim to treat its sources and re-socialize youngsters to the society. The two areas, namely legal rules and practical programmes mutually influence and support each other and provide new perspectives for further development.

We may perceive the new EU directive as part of this global journey, and although it does not represent the final destination it may be a place where the members of the European community look back to their achievements, evaluate and set up a "to do list" for the future. The EU directive justifies the importance of fostering the global movement via regional policies and within this the role of the new EU instrument, as follows: "Although the Member States are parties to the European Convention

for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States". Therefore "by establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States".

The new directive is ground-breaking because children are considered at first as independent actors of the justice system, and in addition to this, in a separate legal instrument. This highlights that youth deviance and youth criminality shall be understood as inevitable target areas of European justice policies. In this regard the possible effect of the directive may exceed the fulfilment of the requirements set by the rules. Member States will have to respond to the idea that delinquent children shall be seen as children at the first place, and their offender status should be of secondary consideration. New institutions and methodologies shall be developed and implemented in juvenile justice and child protection systems. While one may claim that on the whole both national legislations and field practitioners have already done a lot to become "better" in the sense of paying more attention on the child and his future and less on the crime and deterrence, the good practices still need to be promoted and accepted among Member States and more importantly among professionals all over Europe.

Although the ambition of the European Union to establish common standards regarding to the economic and justice matters has a clear unifying role within the community, directing the Member States towards a common goals in this area seems to be a difficult challenge. The approach to youth criminality and juvenile justice in the present is the result of organic development in the past determined primarily by the above mentioned factors. Without knowing the history of success and failure of one particular system it is not possible to gain deep understanding on its procedures and institutions. It determines how Member States deal with the youth delinquents at this very moment. In many regards these national systems can be similar, but in other areas they may show crucial differences. Their face is determined by a number of factors. First it depends on their most important *actors*, who are characterized by the function and responsibilities assigned to them by the laws, and their views on their own role in the justice procedure and children's lives. For example, it requires an unarguably different mindset to be a juvenile judge in a justice-based system than to be a volunteer member of the Children's Hearing in Scotland, whilst the two people have similar roles in respect of decision making.

Second, the character of the system is determined by the institutions, which are involved into the procedure from the moment when the crime is committed until the completion of the programme aiming the re-socialisation of the child. Regarding to the institution assigned to deal with (or treat) offending youth the most important determinant appears to be their legal status, namely whether they are part of the welfare system or their role is to fulfil exclusively justice-tasks.

Third, governmental policies crucially determine how the system operates. Based on their requirements addressed to the actors and institutions the orientation of the systems promote rather supportive state participation in dealing with youth crime or a rather repressive approach on the same

phenomenon. The basic set of values created on policy level can be influential to the fulfilment of tasks on every level of the juvenile justice system. As a final result it can create motivation to move towards a well-designed and well-organised build-up, where actors "speak the same language" and communicate effectively, or it can result in disorganised operation and less developed inter-agency communication.

Fourth, beyond the political will juvenile justice systems are highly dependent on certain financial and intellectual sources. The challenges they face because of the lack of these sources, e.g. poor conditions, lack of methodological innovation, systematic inconsistencies and organisational shortcomings, can be important negative determinants of their general approach. Naturally, poor conditions and unhealthy environment in the prison facilities can lead to the directly experienced violation of children's rights, while the overwhelming caseload of probation workers, the disproportionately high number of cases at the juvenile court or lack of appreciation for support workers have the same effect indirectly.

Finally, in the ever-changing systems of justice our efforts in the present only make sense if they have their clear role in heading towards the goals of the future. Future goals are determined top-down, from international level to national legislation, from national legislation to local institutions. Therefore the perspective of a juvenile justice system depends on the one hand on the international effort that has been taken globally, or in the given community of states to improve the requirements towards states. On the other hand it depends on the states, which have the power to establish regulation and enforce the rules through the institutional system and with the help of the non-governmental sector. Doing it well is not as easy as one would imagine. But doing it and, if necessary, voting for the innovation and change for the better is the only option to find the "right" way among dead ends.

In the course of the work on the juvenile justice of the future we have to recognize the causality of developments in the present. In order to be able to learn from each others' success and mistakes it is important to understand how juvenile justice systems of the world operate, how do they reflect to certain social changes, what is the role of their institutions, and what are the concerns regarding to the work they do. We should gain knowledge on "what works" and what not, in certain settings. International research in this area is important because it helps to reflect to forward-looking goals: it fights the limits of the understanding of only one national regulation, and through this it may change perspectives on the national laws and policies. Until we get to know what is out there we may believe that shades are the one reality for us. Stepping out of this comfort-zone of understanding may be a difficult task. It requires the mindset of a student as well as an inventor who puts together small pieces of reality in order to create his own perception on the reality of others. The open perspective on the opportunities helps to break off the chains of our own values and cultural background that still determine our judgements and opinion. The "facts" we have learned and accepted about certain social phenomena and legal opportunities transform to more flexible set of circumstances. Parallel to the learning process we start to question the phenomena which appeared self-evident before, and attempt to create new structures based on the foundation of the old or sometimes even leaving traditions behind. In this respect, international research may be understood as the engine of more future-oriented development of the national legislation.

Beyond the benefits that international research can bring to the national policy- and law-making, it has important role in improving international standards as well. Naturally, international requirements build on the existing systems and experiences. The broad comparative perspective on opportunities helps to improve the international standards, and to improve mutual understanding on each other's mindset and philosophy. In light of the new EU directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings the latter benefit of international research appears to be crucial for the motivation of further development in this field of common policy.

2. The structure of this study

Chapter I aims to introduce the scope and the methodology of this study in light of the international literature on comparative juvenile justice, highlighting the limitations following from the legal and social particularities of different countries. In respect of the limits of the research I have to agree with the warnings of Tonry and Chambers in *The Oxford Handbook of Juvenile Crime and Juvenile Justice,* who found that systems responding to youth deviance "vary much more widely between countries than do criminal justice systems." (Tonry & Chambers, 2012, p. 871). Indeed, even countries which have common historical roots and thanks to this a relatively similar adult justice system - such as Hungary, the Czech Republic and Slovenia in this research - may approach youth criminality and the reaction to it very differently. It seems that it is almost impossible to press juvenile justice systems into even roughly valid models, and every country is to be perceived as an independent model of its own. In this sense, differences should rather to be analysed based on certain regulatory characteristics, such as the minimum age of criminal responsibility (MACR), the existing special courts, the possibility of transfer, etc. According to Tonry and Chambers (2012) this variety is caused by the human ambivalence and the ever-changing political pressure, which imports and exports rather welfare or rather repressive methods into juvenile justice system, depending on the actual political interests. This phenomenon implies that changes happen often and quickly to serve the immediate political needs, and there is no or only a little static element in the system that could balance these changes. It is often claimed, that studies published on the last week are not necessarily up-to date in this week. Although this fact does not diminish the scientific value of the analysis, the information contained becomes less useful for those in practice who would like to use the scientific material for designing research or joint projects between European countries. The third question Tonry and Chambers raise in connection with cross-nationally understood juvenile justice is the approach of the researcher, which cannot be neutral. Therefore, they argue, no researcher is optimally placed to describe and explain of a country's justice system. Every researcher is highly dependent on his or her own cultural assumptions and education and limited by language barriers, which are considerable even in context of different part of one country, and unquestionably cause the most important restriction in the international field. In this Chapter I will aim to establish a strategy that helps to overcome or set aside the doubts mentioned by Tonry and Chambers.

Chapter II aims to provide a short summary of the developmental perspective in the psychological research and its interpretation in developmental criminology. This Chapter provides the criminological interpretation of the phenomenon called youth criminality in this paper on the one hand, and a descriptive summary on the connection between the scientific results of different fields. It aims to

support better understanding in the evaluation of the significance and position of juvenile justice and child protection, as a framework of state institutions established to deal with delinquent children. In this Chapter an analysis on the understanding of risk will be provided, t to place the scientific result and field practices into the perspective of social reality. The perspectives and institutions introduced in this Chapter will be part of the subject matter of Chapter IV.

In *Chapter III* an overview will be provided on the requirements of international law targeting the institutional reactions to juvenile criminality, introducing not only the rules themselves, but also the most problematic issues of the European juvenile justice systems. I will introduce the relevant regulation of the United Nations and the Council of Europe as well as the legislative efforts of the European Union to implement the international norms. I will provide an evaluation on the situation at Member States of the European Union based on the structure of the concluding observations of the Committee on the Rights of the Child. In this analysis those key questions in juvenile justice will be identified, which appear to be the most problematic in light of the children's rights as established by the UN and the Council of Europe. These key questions will be used to limit the analysis on the fulfilment of children's rights requirements in the in the model-countries in Chapter V.

Chapter IV provides a detailed introduction to different models of juvenile justice in Europe. Based on the comparative framework of Winterdyk (2002) I distinguished six models: the crime control model, modified justice model, welfare model, minimum intervention model, the corporatist model and the justice model. This categorisation of systematic solutions does not aim to place every European system into one of these six schemes, but provides a general picture on the scale of the European approaches and strategies on the control of youth criminality. My analysis on the systems does not only reflect to their actual legal construction, but also to their orientation to welfare or justice solutions, their approach on the control of children of a particular age and the set of tools they apply to prevent, repress and reduce youth criminality. In this regard I will pay special attention to the aspects which make one system similar to the others and those which establish crucial differences. In this Chapter I will introduce each model of juvenile (youth) justice through an example of a country, that I have studied in the past more than four years. Through the example of the Dutch juvenile justice system I will introduce the modified justice model, through the Belgian system the welfare model, through the English system the corporatist model, through the Scottish system the minimum intervention model, through the Finnish system the justice model and finally through the Hungarian example I will introduce the crime control model of juvenile justice. I will restrict my analysis to the following characteristics of the systems: (1) general philosophy, (2) understanding client behaviour, (3) purpose of intervention, (4) objectives, (5) tasks, (6) legal construction, (7) key agency, (8) key personnel and their (9) typical instruments. The knowledge on the systems introduced in Chapter IV is essential to understand the content of analysis of Chapter V.

Chapter V aims to introduce how the countries of different juvenile justice models deal with the problematic issues of the juvenile justice in Europe. In this Chapter a legal analysis will be provided on the institutions of the studied countries, based on the requirement of various international documents introduced in Chapter III. This Chapter gives detailed insight to the legal regulation of (1) age thresholds of criminal responsibility and procedure in front of adult court, (2) the meaning and application of 'alternative measures' in juvenile justice, (3) various aspects of deprivation of liberty, (4)

petty crimes and antisocial behaviour, (5) discrimination of juvenile offenders and (6) the question of specialisation in the juvenile justice systems.

As a Central European researcher I have always found it important to put Central-Eastern Europe into the spotlight, and challenge the often genuienly wrong presumptions and judgements of the international literature about this area. In *Chapter VI* I attempt to fulfil this task when I compare the juvenile justice systems of the Czech Republic, Hungary and Slovenia both in their historical development and the current legislation. In this comparison myths will be hopefully divided from reality about this area, which is called "Post-Socialist" or "Eastern European" in international literature. With regard to the obvious historical parallelism in these countries (and here I can already underpin the truth about common social and legal traditions), the scale of comparable characteristics is determined mainly by the legislation and practice of the past 20 years. Therefore I chose to compare the regulation on MACR and minor delinquency and diversion, the jurisdiction of juvenile offenders and the practice of sanctioning. The subchapter on 'Figures of youth deviance and socially problematic tendencies' attempts to bring down further myths about the behavioural patterns of youngsters in the three countries. The conclusion of this part of my study points out that control of child delinquency does neither strictly depend on the historical solutions, nor the social phenomenon of increasing or decreasing delinquency of children in the particular country or area. It rather depends on specific cultural features and political decisions.

CHAPTER I

THE SCOPE OF THE PRESENT STUDY

The goal of understanding the structure and mechanisms of institutional reactions to delinquent behaviour in comparative perspective implies the need for a very broad examination of different legal systems, particular types of measures, policy approaches and the evaluation of practical outcome. The four volumes of *Juvenile Justice Systems in Europe* of Dünkel and colleagues (2010) proved that a complete systematic analysis, along which readers are able to gain information not only on systems as separate entities, but also about their comparable characteristics, can only be achieved within a huge international projects. The more than 1800 pages of material on European juvenile justice systems contain both independent introductions to the juvenile justice systems in Europe and comparative analyses of certain aspects of the systematic operation of these, such as sentencing practices, deprivation of liberty or the stage of implementation of restorative methodologies. The massive amount of knowledge to be processed and the need for broad cooperation in such a project imply that in smaller studies the comparative approach shall be limited to the goal to understand one or some aspects of the system. Depending on what one would like to prove or achieve with the research, the comparison of systems and particular institutions can approach the topic in a variety of ways. Comparative studies tend to focus on the policy (Cavadino & Dignan, 2006), philosophical background (Dammer & Albanese, 2013), or limit themselves to introduce only certain institutions (Muncie & Goldson, 2006) or relatively easily comparable limits set in laws (Killias et al., 2012).

This Chapter provides an overview of the possible limitations in light of the scientific literature on comparative juvenile justice. Based on the experiences and difficulties discovered in previous research projects I will establish the appropriate limits to the present study. Furthermore I will trace out the methodology of the analysis in light of the potentially problematic factors, and introduce the main questions of this research.

I.1. The problem of ‘juvenile’ justice

When trying to establish the list of institutions that are dealing with youth offenders, the juvenile justice system is obviously a plausible area to start the research with. Fortunately, Rec(2003)20 of the Council of Europe provides a universal definition of what governments, practitioners and researchers should concern as juvenile justice in the Member States. According to the Recommendations 'juvenile justice system' shall be seen as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. Based on this definition, justice institutions "work closely with related agencies such as health,

education, social and welfare services and non-governmental bodies, such as victim and witness support". The expression of "working closely" refers to all kinds of connections in the international practice: professional support, consultation, taking over certain tasks from the juvenile justice, or even taking over juvenile justice as such (see the example of Belgium in Chapter IV). In this regard tasks and institutions of child protection systems and social services are important to take into consideration as well, since they may work with the same methodologies or run the same types of institutions as the justice institutions of another country. This approach necessarily amounts to a somewhat flexible concept that basically has to give up the goal of finding completely equivalent institutions in every country. The bottom line of the differences is probably the minimum age of criminal responsibility (MACR), which differs country by country in Europe from the age of 0 to 18 (Cipriani, 2009). This variety in the age group targeted by the juvenile laws makes the comparison of the reactions to delinquent behaviour difficult. First, this means that while children under this age are treated in the general framework of the child protection, children above the age of criminal responsibility are treated in a special (most likely justice-based) system. The two systems differ in their goals, professional approach, methods of treatment, etc., as well as in the perceptions on a criminal act of a child. While in the juvenile justice system the behaviour is the subject of the procedure, in child protection the criminal act is perceived as one of the problematic aspects of the child's life and therefore receives less attention both in the official statistics and in course of the intervention. Second, the different target groups imply that certain institutions with the same name are not necessarily the same in their content, because they are dealing with a different group of children or they are implemented by a different group of practitioners. For example, every country understands different relations under 'supervision' of child offenders. In some countries it refers to a supportive relationship between the child and a social worker, while in other countries it refers to pure control of the child's behaviour.

Comparative legal studies (see Table 1) tend to focus on the criminal regulation instead of the target group of the procedure, in this case the *child,* in order to avoid difficulty of comparing the treatment of equivalent age groups. This is, of course, a self-evident strategy. Databases of the justice systems provide with much more detailed data in respect of the criminal act than those in child protection, therefore information on the treatment of child offenders in the child protection system is often based on subjective explanations and personal experiences. Including this information in the analysis provides only vague side-information to the well-established justice procedures, while the detailed explanation of the relationship between juvenile justice and child protection only complicates the introduction on the already difficult procedure.

In light of the above, MACR seems to be a crucial element in establishing the scope of the comparative study. At the same time the fact that there is lack of global standard on MACR makes 'juveniles' within the juvenile justice system ambiguous category in the international field. The most detailed requirement of the Beijing Rules states, that "in those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". Although the regulation only gets as close to the real standard as "not too low", the Committee on the Rights of the Child narrowed this broad requirement somewhat more in her General Comment No. 10 (2007) on Children's rights in Juvenile Justice (see in detail in Chapter II), and established an absolute minimum

age: 12 years. This means, that MACR set lower than 12 years may be claimed to be "too low" based on the Beijing Rules, but cannot be called as a violation of the UNCRC. Whether the age limits within the acceptable scale are appropriate in light of the procedure and punishments and measures that may be applied, is a matter of further debate about the this aspect of the juvenile justice.

In this study I will examine the institutional reactions to youth criminality. Hereinafter "youth criminality" refers to the criminal acts of all children under the age of 18, who have reached the respective juvenile age. Institutions which are entitled to respond to their criminal acts through establishing responsibility and/or applying certain measures or punishments constitute the system of institutional control. With regard to the differences in MACR and the possible overlap in systems of juvenile justice and child protection, I will examine not only justice institutions, but the child protective reaction as well, without paying detailed attention to the regulation of child protective procedures.

I.2. Review on international comparative works

In this subchapter I provide an overview of the international comparative studies on juvenile justice systems from the past decades. The studies are based on different comparative ideas. In the course of the selection I focused on the following criteria: (1) *general*, instead of local approach on juvenile justice; (2) *multinational* instead of national or regional scope; (3) the study refers to *institutional* differences instead of the phenomenon juvenile delinquency; (4) covers exclusively or primarily *European* countries. Finally, I have found eleven studies that correspond to the criteria. Table 1 provides an introduction to these.

Table 1. Comparative works on juvenile justice systems

AUTHOR AND TITLE	YEAR	APPROACH	INSTITUTIONAL SCOPE
Winterdyk, J. A. (Ed.). *Juvenile Justice Systems: International Perspectives*. 2nd ed. Toronto: Canadian Scholars Press	2002	institutional	juvenile justice
Jensen, E., Jepsen, J. (Eds.). *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems*. Oregon: Hart Publishing	2006	children's rights/critical	juvenile justice
Junger-Tas, J, Decker, S.H., (Eds.). *International Handbook on Juvenile Justice*. New York: Springer	2006	territorial	juvenile justice
Junger-Tas, J., Dünkel, F. (Eds.). *Reforming Juvenile Justice*. New York: Springer	2009	children's rights/critical	juvenile justice
Dünkel, F., Grzywa, J., Horsfield, P., Priun, I. (Eds.). *Juvenile Justice Systems in Europe. Current Sitation and Reform Developments. Vol. 1-4.* Mönchengladbach: Forum Verlag	2010	institutional/ children's rights	juvenile justice
Dammer, H. R., Albanese, J. S., *Comparative*	2013	philosophical	juvenile justice

Criminal Justice Systems. Fifth Edition. USA: Wadsworth			
Reichel, P. L., *Comparative Justice Systems – a topical approach*. US: Prentice Hall	2012	institutional/ historical	juvenile justice
Killias M., Redondo, S., Sarneczki J., *European Perspectives*. In.: Loeber, R., Hoeve, M., Slot N.W., Van der Laan, P. (Eds.): Persisters and Desisters in Crime from Adolescence into Adulthood. Surrey: Ashgate, 291-334	2012	institutional	juvenile justice
Muncie, J., Goldson, B., *Comparative Youth Justice. Critival Issues.* New York: Sage	2006	children's rights/ critical	juvenile justice
Cavadino, M., Dignan, J., *Penal Systems*. *A Comparative Approach*. London: Sage	2006	institutional	juvenile justice
Hazel, N., *Cross-national comparison of youth justice*. Retrieved from http://www.academia.edu/1621782/Cross-national_comparison_of_youth_justice (22/03/2014)	2008	institutional	juvenile justice

These studies represent a variety of comparative perspectives: although all of them undertake the task of analysing institutions that respond to youth criminality, the comparison tends to be limited either in its scope or in its depth. Those authors who compare systems as a whole, such as Winterdyk (2002) or Cavadino and Dignan (2006) are focusing on the main features of certain systems, while others, such as Muncie and Goldson and their colleagues (2006) undertake the in-depth analysis on legal and policy matters concerning only a few institutions instead of presenting an overall picture. Some authors use models or country-clusters to simplify the analysis of the variety of countries (e.g. Winterdyk, 2002; Cavadino & Dignan, 2006; Junger-Tas & Decker, 2006), while others compare features of policies or institutions without classification (e.g. Killias, Redondo, & Sarneczki, 2012; Muncie & Goldson, 2006). The variety of perspectives obviously follows from the differences in purpose: if we intend to prove the impact of the geographical situation of the country on the build-up of its juvenile justice system, than classification of countries is a crucial element of analysis, while in case of the analysis of the latest policy-trends it is not necessary. The overview of these studies provides insight to the limitations of comparative studies, as well as the opportunities of improvement in approach and methodology.

Literature on comparative justice is using the expressions of 'model', 'approach' 'philosophy' rather inconsequently. Therefore a short explanation is necessary on how I understand and use relevant expressions in this study:

Approach: the way of thinking about the role and the purpose of the system. As Cavadino and colleagues (2013) analyse the historical development of the British juvenile justice they list the different *approaches* which formed the system toward the current face. For instance, in Hungary we may talk about *neo-correctionalist* approach in juvenile justice recently.

Philosophy: a particular system or set of beliefs on human behaviour or attitude to life, which result a general opinion on the role of juvenile justice (see Dammer & Albanese, 2013). For instance, in Hungary we may talk about *punitive* philosophy following from the recognizing the child's responsibility for his/her acts.

Model: a simplified description of a system, used for explaining how a juvenile justice system, characterized by specific set of institutions, work (see Winterdyk, 2002) and/or fit to the human rights requirements. National policies and strategies of crime control and crime prevention are usually developing typical institutions of more than one model. As Cavadino and colleagues (2013) note "in practice policy is always a mixture of models, which can often give rise to tensions and contradictions". Different policy *approaches* over time may affect the institutional setting so much, that it transforms to represent another model. Changes in dominant *philosophy* may lead to extreme and quick change to another model. Taking into consideration its institutional setting, leading philosophy and current political approach, Hungary is representing the *control model* the most.

Some of the comparative works do not undertake the task of theoretically underpinning the country-classification, or modelling juvenile justice systems, but only aim to provide information on the state of juvenile delinquency and development of the institutional system (Junger-Tas & Decker, 2008 and Jensen & Jepsen, 2006). While other works attempt to classify countries with regard to their common or similar cultural, political or systemic characteristics (Winterdyk, 2002; Dünkel et al, 2010; Dammer & Albanese, 2013, Killias et al., 2012; Hazel, 2008). However, depending on the aim of the study, the authors are approaching juvenile justice systems differently. There are at least four leading comparative approaches in juvenile justice. Hereinafter I will provide the structured review of these.

I.2.1. Territorial approach

At the first sight, the most obvious classification of European countries is based on their territorial situation. Certain areas in Europe tend to show similarities in their legal patterns, institutions and particularities in their social structure (such as the equality in the Nordic countries), as for instance historical and cultural bonds. For instance, the countries of Eastern Europe, which spent a long period of time under Soviet influence from the Second World War to the transition in the 1990s show similarities in their criminal laws and approaches, such as the minimum age of criminal responsibility which is set at 14 years in most of these countries (Cipriani, 2009, p. 85).

The *International Handbook on Juvenile Justice* (Junger-Tas & Decker, 2006) follows the classical territorial-cultural classification of the participating countries. The authors divided the participating countries to (1) Anglo-Saxon countries (including those outside of Europe, e.g. the United States); (2) Western-European (continental) countries; (3) Eastern-European countries and (4) the two 'special' systems of Scotland and Sweden. Anglo-Saxon orientation in Europe is represented by the English speaking countries with the exception of Scotland, and adding the Netherlands, Western-European countries cover all of the historical democracies in the continental Europe, while Eastern-European cluster covers the Post-Socialist 'new' democracies. Differences between the clusters of states are only explained in the closing chapter of Josine Junger-Tas (2006). Here she refers to the typical

trends of development in juvenile justice, and makes conclusive notes on crucial differences between the orientations of the three clusters' policies. In her opinion policy on juvenile justice in the Anglo-Saxon cluster is "justice" oriented, characterised by a retributive, sometimes repressive approach, placing strong emphasis on the juvenile's accountability. In contrast, Western-European countries are characterized by welfare orientation, which is based on historically developed tradition of humane approach. Despite the long term spent under strong Soviet influence, traditions of humane approach did not turn to harsh correctionalism in the third group, the Eastern-European countries, according to Junger-Tas. She explains the resistance as the result of the European Human Rights movements having significant influence in Central- and Eastern Europe as well.

Taking into consideration that political changes constantly form juvenile justice systems in Europe, the actuality of both the clusters and the characterization are at least equivocal. Furthermore, I find these clusters too broad to provide realistic explanation on the operation of juvenile justice systems along their common characteristics. For example, it is unlikely, that the Belgian way of dealing with child offenders would support the understanding on the German juvenile justice system, however both belong to the Western-European cluster.

Although this study does not cover questions of deviant behaviour, I have to note that a territorial-cultural approach to country-clusters may be more relevant regarding trends of juvenile delinquency. In the *International Self-Report Delinquency* (ISRD) study territorial classification of Esping-Andresen (1990) proved its relevance in behavioural context. The following clusters have been discerned in this study: (1) Anglo-Saxon; (2) Western-European; (3) Northern European; (4) Mediterranian; (5) Post-Socialist. Using the data of the ISRD Junger-Tas (2012) have found significant differences in trends of deviant behaviour between certain clusters. In conclusion, this approach seems to be adequate in case of a study on *deviant behaviour* as a cultural characteristic, however not in studying legal regulation of *institutional build-up.*

I.2.2. Philosophical approach

Jay Albanese and Harry Dammer (2013) classify juvenile justice systems according to the aim assigned by the philosophical ideas on their goals. Regarding to this, they differentiate between goals of serving the (*1) rehabilitative* idea*;* the *(2) due process;* and *(3) punitive* goals. Connection between these philosophies appears along disenchantment with unsuccessful practices of crime prevention and crime control. Disenchantment with rehabilitative practices resulted in transfer of focus to fairness in legal terms on the one hand, and reversal to harsh punishments on the other hand.

The *rehabilitative* idea on juvenile justice dates back to the child saver movement in Illinois at the end of the 19th century. Social changes resulting increasing number of street children and minor criminality established the need to alternatives to the classic justice in the United States. These resulted in more than mere institutional reforms. The new ideology had been based on the ideas of social Darwinism, European positivism and protestant rural ethics and it has been placed into the frame of a medical model of (social) illness and treatment. In light of European Darwinism, children in 'dependent classes' were looked at as anatomically and morally deprived compared to the middle class population. The first institutional changes (e.g. establishment of the Elmira Reformatory) aimed to correct these

deficiencies with, as Platt notes, gathering up all the dependent classes into large rural institutions, "where they could be disciplined, have companionship with their own kind, and somehow develop 'feelings of affection'" (Platt,1969). In contrary to the Darwinist idea of the man creating the circumstances, European positivists, like Tarde claimed that circumstances create the man. Accordingly, the source of 'pathology' is not from nature but nurture (Platt, 1969). Social circumstances, such as (and especially) the city at the turn of the 19th and 20th centuries, were seen as crucial factors of determining criminality. People here have lost the traditional rural sense of community, informal control and care for each other. Vulnerabilities of children growing up in cities were following from the lack of parental attention and discipline (Balogh, 1909). Although the lack of these factors may cause serious deviance, the process of becoming criminal was not irreversible in the view of the reformers They believed that children can, and *must be* saved through proper education and therapy.

State legislators of Illinois rediscovered the medieval term of *parens patriae*, which originally referred to the doctrine that the English Crown was allowed to intervene in family matters if the parents were unable or unwilling to care for their children (Albanese & Dammer, 2013). Civil associations and state organs started to institutionalize 'educative care' in the name of the welfare of the child. The rehabilitative ideology quickly became popular in European countries as well. Countries one after the other established child protective institutions and separated juvenile justice from adults' at the beginning of the 20th century. The age was characterized by medical (treatment) ideology and institutionalization of social problems (Albanese & Dammer, 2013).

According to the *due process idea* the best interest of the child may only be served in formal procedures, shaped by legal guarantees. In this view the only thing the state can do for the child is providing fair process. The welfare of the child is ambiguous category, and therefore, secondary.

Due to the lack of success of the rehabilitative ideal, another belief have risen at the end of the 20th century. Disillusionment in treatment resulted in total rejection of efforts in order to make people happy. General feeling of public safety and social order became leading principles of *punitive* policy making. Unnecessity of differential treatment resulted in growing opportunities of transfer to adult courts, and shaped juvenile justice toward the purely controlling face of adult institutions.

I.2.3. Institutional approach

a) C*lassic binary approach*: this approach differentiates between justice- and welfare-oriented juvenile justice systems. According to this approach all countries may be placed on a two dimensional diagram according to the number of systematic elements leaning towards justice or welfare ideal. The two models of juvenile justice do not refer to the same phenomenon as they do in the traditional understanding on the *legal construction* of juvenile justice. While the latter is based on simple distinguishing criteria of the legal fields (justice versus social-administrative), models of juvenile justice offer broad explanatory frameworks, which have been formed by legal characteristics, policy approach and leading philosophy.

In this binary system we have to distinguish countries, which have established a juvenile justice system separate from the adult system, from those who have not. The separate system is characterized

by systemic overlapping with child protection and significant discretionary powers of judges to decide whether a protection measure or a criminal punishment would be more efficient regarding prevention of recidivism. Because of the strong orientation towards considering the child's need as opposed to deeds and diverting criminal justice measures to the social system, these countries are called *welfare countries*. Countries, which did not build separate juvenile justice system by law, are focusing more accurately on due process, when bind judges to follow strict legal provisions excluding the opportunity of discretion. Equality in front of the court leads to equality in decisions regardless (or with moderate regard) to personal circumstances. Although the age of the offender is considered as general mitigating criteria, this may be applied only if and in the extent the law allows it. Discrepancy is rare, although it may occur in the sentencing practice. Those *who are not supposed to be punished* can be diverted from the whole process, and thus, they do not have to go through the process, which possibly leads to punishment either.

The two basic approaches however do not seem to be enough to describe the variegation of all European countries (Dünkel et al, 2010; Reichel, 2012). In the above-mentioned binary system we may conclude that both Finland and Hungary belong to the group of justice-faced countries, because neither of them have built separate systems for juveniles. Child protection or social protection is not involved to the work of juvenile justice, but they are strictly separated from it. Although this observation is true, further differentiation is needed to explain how these systems work in practice, with special attention to those mechanisms which support or hinder diversion from justice to welfare.

b) *Systematic*: this approach constitutes that the development of juvenile justice systems resulted in (at least) four more models besides the original justice-welfare dichotomy. Contemporary juvenile justice systems are not exclusively determined by their legal build-up and partial institutional fusion or cooperation with agencies of social support. The main focus of the justice system is to be found in the typical instruments, the organisation of the system or the belief of professional that governs behind the scenes. The six systematic models are the (1) welfare model; (2) justice model; (3) minimum intervention model; (4) restorative justice model; (5) neo-correctionalist/control model and (6) modified justice model (Winterdyk, 2002). Systems of each country are analysed according to the same comparable aspects and each model includes those countries, which show similarities in most of the main characteristics.

In one of the most important works of comparative juvenile justice, John A. Winterdyk and his colleagues (2002) classified the juvenile justice systems of the world's countries regarding seven aspects: (1) general features, (2) key personnel, (3) key agency, (4) tasks, (5) understanding client behaviour, (6) purpose of intervention and (7) objectives. According to Winterdyk using these criteria allows the researcher to provide a description on the main features of the system but "part of the challenge is for the readers to remain objective in their approach and guard against social and/or cultural biases when drawing conclusions."

c) *Policy-based*: the policy-based approach of Cavadino and Dignan understands systematic pluralism in a radical sense, according to which no clear models of juvenile justice can be distinguished**,** but typologies are necessary for analysing the balance of influence between various different youth justice approaches. In their opinion, juvenile justice systems are not simply legal constructions, but results of interconnected influences of general ideological and cultural factors,

penalty ideology and culture, material conditions and the philosophy, arrangements and practices, and processes of the youth justice itself (Cavadino & Dignan, 2006, p. 200). Based on the common features of certain groups of states they divided them into the following categories: (1) Neo-liberal and (2) Corporatist (Cavadino & Dignan, 2006). *Neo-liberal countries* are mostly based on the Anglo-Saxon culture, such as the USA, Great Britain, New-Zealand, South Africa and Australia. Although they show crucial differences in certain aspects (such as the restorative approach of New Zealand as opposed to the clearly neo-correctionalist policies in the USA), it is generally sensible, that the movements towards uncompromisingly neo-correctionalist approach tend to repress welfare solutions in these countries. Accordingly, their justice system is more receptive to the justice-based solutions, than anything else. The *corporatist* countries may be divided into three sub-groups according to Cavadino and Dignan: a) conservative corporatist, b) social democratic youth justice systems, and c) oriental liberal corporatist youth justice. Since the last group does not refer to the European systems but only the juvenile justice in Japan, this approach will not be introduced in this part. The *conservative corporatist countries* (e.g. Germany, France, Italy, the Netherlands) have specialized criminal courts for juveniles, the focus of which is the legally established criteria of resocialisation using educational methods. The pedagogical purpose already shows in the process in which the measures are applied, inter alia in the attention paid to the needs of the juvenile. The high importance of the consideration of children's rights, and accordingly the application of minimum intervention in order to avoid stigmatization is also a typical feature. The *social democratic countries* (e.g. Finland and Sweden) however do not have separate juvenile justice systems, and tend to correspond with requirements of children's rights. In these justice systems serious criminal punishment (such as imprisonment) is rarely applied against a juvenile. The reason of this is that the majority of the cases are diverted to the social system, where both the manner and the consequences are responding to the needs, instead of the deeds of children.

I.2.4. Critical approach

Finally, instead modelling juvenile justice systems, Goldson, Muncie and their colleagues (2006) have been focusing on the critical issues of the institutions appointed or entitled to act in case of juvenile delinquency. In their book on comparative youth justice they did not introduce models of countries, but provided detailed descriptions about particular problems of juvenile justice systems in cross-national perspective. They deal with the following topics in juvenile justice: (1) re-penalization; (2) adulteration; (3) welfare protectionism; (4) differential justice; (5) restoration; (6) tolerance; (7) decarceration, and (8) children's rights.

These studies provide a perfect overview on the current developments in juvenile justice, and encourage debate of the structural, cultural, political constraints and national as well as cross-national dynamics. The latter context may also include the question of transnational implementation of certain institutions together with their systematic role and country-specific modification. In the globalising world and the united Europe the importance of these comparisons increases together with the growing number of transnational projects and policies. While on the other hand, picking one particular part of the system out of the whole suggests that the authors assume broad and fundamental knowledge and personal experience of the justice system of a number of countries from the reader. This is, however,

very rare. Therefore this type of analysis easily leads to misunderstanding on the role and gravity of the institution under examination in one country compared to another. Although this structure of the analysis provides clear focus on a given international issue, important questions following from the complexity of a justice system may remain out of perspective.

I.3. Comparative approach of the present study

The above summary of different classifications based on territorial areas and philosophical ideas, legal rules and policies on the build-up of juvenile justice systems draws the attention to the complexity of the theoretical construction of a juvenile justice system. Studying the whole complexity would exceed the magnitude of a PhD research, therefore I will have to apply limitations.

1. The first limitation of the study is that it will focus exclusively on formal, institutionalised reactions to youth criminality, excluding all forms of informal control. The reason of this limitation is that the international rules on children's rights will be applied as focus points of the comparison, which determines the primarily normative nature of the analysis. The UNCRC and other documents on the response to juvenile delinquency establish requirements that shall be fulfilled and enforced primarily, although not exclusively, by state authorities. With regard to that response to criminal offences is the responsibility of the state, established by national penal codes, acts of unwritten law and that juvenile justice is part of, or at least connected to the justice system in most of the countries in the world, rules on children's rights requirements in juvenile justice address primarily the states.
   Informal structures, such as role and participation of non-governmental organisations, local communities and the business-sector in the response to juvenile delinquency represent a field that provides lot of opportunities for future research as well.

2. The second limitation shall concern the number of countries examined during the research. When choosing the target countries the primary goal was to find a good match between the theoretical frameworks introduced the previous subchapter and the amount of countries that can be examined in depth during the term of a PhD research.
   As it is stated under limitation 1, this study will be restricted to formal, institutionalised reactions to youth criminality. This requirement implies the exclusion of the territorial approach with regard to the inaccurate systematic classification following from the geographical focus. For instance, even though policies of England and Scotland appear to be similar in general, in juvenile justice they established genuinely different institutional systems that are assigned to react in case of juvenile delinquency. The philosophical approach shall be excluded as well, because it does not provide comparable systematic elements, and is therefore not clear enough to serve as a basis of the current study. As opposed to this, the critical approach does not help to understand the system as a whole, including the connection and procedures between its institutions, but it provides in-depth analysis only on those institutions, which are in focus of policy-developments. Excluding all the other approaches, the institutional approach appears to

be the most appropriate for the topic. Within this, I have chosen to use the systematic approach of Winterdyk (2002). While the classification of the binary model gives too broad picture, and the policy-based approach focuses on developments rather than finding the balance between static and dynamic elements of the system, the approach of Winterdyk assists perfectly to a detailed introduction into the juvenile justice systems and provides comparable examination criteria.

As it follows from this framework, six countries (one of each model) will be introduced in depth, as examples of their models. These countries are the following:

1. minimum intervention model: *Scotland*
2. welfare model: *Belgium*
3. corporatist model: *England*
4. modified justice model: *the Netherlands*
5. justice model: *Finland*, and
6. crime control model: *Hungary.*

It is important to highlight that although the countries representing the models have already been determined based on international literature (Winterdyk, 2002; Pruin, 2010), the models used in the analysis are ideal types of systems, representing typically cohesive features of organic development and policy-trends. Conclusively, the above listed countries will not correspond with the requirements of one model in every aspect, but only in the majority of their characteristics. Since these models were established based on the already existing youth justice systems of Europe and North America, their validity is not universal, but limited to these parts of the world.

Taking into account the above aspects, as well as other viewpoints of the relevant literature, the analysis of the present doctoral thesis will be based on the classification of Winterdyk (2002). In order to unravel the essence of theoretical models even more detailed, I have amended and improved the lists of aspects and characteristics by changing the category of ‘general features’ into ‘general philosophy’ and adding ‘legal construction’ and ‘typical instruments’ to the list of criteria of Winterdyk. ‘General philosophy’ of the system is a significant viewpoint, because it provides the opportunity to look at the historical development of the philosophical approach towards children and the policy on punishment as well as the typical institutions. Basic knowledge on the ‘legal construction’ is crucial to understand certain mechanisms as they are supposed to work, sometimes in contrary to the reality. For example, it is relevant to know if there exists a legal obligation for cooperation between child protection and justice authorities in a justice procedure in order to evaluate the efforts of the given country to put forward a strategy on improving non-intervention or diversion. In conclusion, in the analysis in Chapter IV the following list of aspects will be taken into consideration: (1) general philosophy; (2) understanding client behaviour ; (3) purpose of intervention; (4) objectives; (5) tasks; (6) legal construction; (7) key agency; (8) key personnel and (9) typical instruments. The expectation on these aspects in different models is summarised in Table 2.

Table 2. Criteria of juvenile justice system models

	MINIMUM INTERVENTION MODEL	WELFARE MODEL	CORPORATIST MODEL	MODIFIED JUSTICE MODEL	JUSTICE MODEL	CRIME CONTROL MODEL
general philosophy	• informality • minimal formal intervention • resocialization	• informality • generic referrals • individualized treatment • indeterminate sentences	• administrative decision making • diversion of juvenile delinquents from justice	• due process • informality • criminal offences • bifurcation: soft offenders diverted, serious offenders punished	• due process • maximizing protection of Children's Rights • diversion of juvenile delinquents from justice	• counter-reformation, punitive • evidence-led, improving effectiveness • responsibili-zation • early, progressive intervention
understanding client behaviour	people are basically good	pathology, environmentally determined	dissocialized	diminished individual responsibility	punishment	incarceration/ punishment
purpose of intervention	re-education	provide treatment (*parens patriae*)	retain	sanction behaviour/provide treatment	sanction criminal behaviour	protection of society, retribution, deterrence both in case of antisocial and criminal behaviour
objectives	intervention through education	response to individual needs	implementation of policy	respect individual rights/respond to special needs	respect individual rights/punish	order maintenance
tasks	help and education	diagnosis	systems intervention	diagnosis/ punishment	punishment	incarceration
legal construction	alternative	welfare	welfare	welfare	justice	justice/welfare
key agency	community agencies, citizens, school	social work	interagency structure	law/social work	law	law
key personnel	educators	childcare experts	juvenile justice specialists	lawyers, childcare experts	lawyers	lawyers, criminal justice actors
typical instruments	child protective intervention if any	non-custodial, child protective intervention	community sanctions	• traditional set of penal sanctions • child protective intervention if needed	• traditional set of penal sanctions • instruments of restorative justice	• short sharp shock • boot camps • zero tolerance • mandatory minimum sentencing • naming and shaming • criminalization of undesired behaviour • control over parents

Source: based on the original idea of Winterdyk (2002)

Applying the above models is not only beneficial in a scientific analysis. It offers a transparent framework for any kind of comparison of youth justice through providing a structured basic knowledge and the key aspects and institutional solutions of juvenile justice systems. It is a good basis for analysing policies in force, as well as for the preparation of the implementation of new policies, because it offers insight to the institutional system of other countries without providing a too large scale of different solutions. It may also be a good orientation point for policy-makers who intend to improve their systems through implementing a new institution and for the purpose of this would like to discover the potential obstacles in the system. As Meško (2009, p. 23) claims, the implementation of foreign (or now they may be called global) practices requires "consistent knowledge of compared contents and qualitative interpretation of similarities and differences between problems, legal cultures, priorities, socially elite networks, sensitivity of the public, among others". The adequate knowledge is the task of comparative criminology, which is, as he further claims, still facing challenges on the multi-cultural level of understaning, in for instance comprehension, interpretation and ethics.

Apart from this I intend to provide a separate comparative analysis on Eastern European countries, namely *Hungary, the Czech Republic* and *Slovenia*. The reason of this is that this region is less known to comparativist researchers than Western Europe, although it has the potential to become the target of comparative discussions in the international field. The transport of Western policies and practices imply that Eastern European countries should be dealt with as the part of the European penal development rather than a segregated area within Europe.

3. Finally, I intend to examine the juvenile justice systems' legal and practical sights in light of the relevant requirements of children's rights and the results of developmental studies. I will accomplish this via two different analytical strategies: in the introduction of juvenile justice models I will to focus on how particular institutions fit into the developmental phenomena in the given country, while in the institutional analysis I will compare the stage of the implementation of children's rights requirements in respect of particular institutions.

   I chose to use these requirements because they take into consideration the rationalities that lead my scientific approach and research as well: criminological rationality and human rights. A criminological and psychological research that aims to discover the causes and patterns of deviant behaviour characterizing children, adolescents and young adults approaches this topic mainly from the developmental viewpoint, instead of providing cross-sectional results on certain aspects. This approach does not only help to find the place of criminal and deviant behaviour within the developmental process, but offers important input into the elaboration of effective methodologies and achieving success in the field of preventing child criminality.

   Children's rights guide towards effective strategies and least harmful practices based on scientific results into universal legal requirements. The regulation objectified and standardised those requirements that countries should fulfil in order to deal with their children in a manner that is supports their healthy upbringing and helps in building a better future. As a part of this procedure, dealing with deviant, and especially with delinquent children is a core question.

Setting boundaries between relevant and unnecessary sanctions, acceptable and too harsh punishments, effective and void methodologies, refers back to the developmental rationalities. In light of this crossroad of the two fields, the general question is: how *should* we deal with those children who commit crimes? The comparative analysis of certain institutional solutions in this study aims to reveal those practices, which are rather preferable compared to those which are rather avoidable or expressly opposed to based on the regulation of children's rights or with regard to the lack of scientific rationality.

I.4. Method

I.4.1. Methodological framework

Designing the methodology for international comparative studies in the field of law and criminology is a relatively difficult task. The demand towards such a comparison is to define the role and meaning of differences and confirm suspected similarities between the juvenile justice systems of different countries. Readers who do not have understanding on more than one system have to be provided with clear explanations in both the description of certain institutions and the arguments on their positive or negative evaluation.

For the accomplishment of this task, the researcher is required to have significant knowledge on the relevant national and international scientific literature, as well as the ability to interpret the literature correctly. Correct interpretation does not only extend to the broad knowledge on the different institutions used in different countries, but also to the understanding on the role of these in the give system. On the way to gaining the right set of knowledge the researcher has to face a number of difficulties, which may be called 'the obstacles of the international comparison in law'. First, the build-up of the juvenile justice systems is set in legal rules that show genuine differences. Issues with comparison lie in the differences in the logic of common law and civil law, as well as the variety of legal fields, which contain regulation relevant to juvenile justice. In legal terms, juvenile justice is established as a narrow common area of justice, general welfare, child protection and healthcare regulation, and in addition to this every country combines these differently, regardless to the general characteristics of the legal system. While the Belgian juvenile justice system is established within the child protection, in the Hungarian system it is hard to find any sign child protective consideration. Different patterns of cooperation have been developed between agencies of social welfare, law enforcement and justice authorities in England and the Netherlands, while Scotland developed a special system for the involvement of lay citizens into the decision-making about cases of youth delinquents. Thanks to this phenomenon, specific institutions that can be found in multiple countries, such as reformatory institutions, are established in different legal fields what shifts their purpose and characteristics. Beyond the difficulties in the legal structure, cultural-linguistic questions further complicate international research in juvenile justice. The cultural background of the juvenile and the given society determines the view on its institutions as well. Regardless to the available

recommendations specified in international documents, an “appropriate period” or “healthy environment” might be perceived differently in one culture than in another. Evaluation on the situation is necessarily based on local expectations of (usually) local professionals.

Apparently, international research without international experience may easily lead to wrong or superficial conclusions. Therefore, researchers of comparative studies have to find the appropriate way to collect accurate information and data that reflects to the reality as much as possible. In this respect we have to note that, while in the ideal case a researcher should be familiar with the local characteristics, personal visits are limited by time, financial support, and availability.

Regarding to international comparative methodology David Nelken (2012) lists the following three approaches:

a) *behavioural science or positivist sociology:* the goal of this "to test and validate explanatory theories of crime or social control”;

b) *interpretivist:* “to show the meaning of crime and criminal justice is embedded within changing, local and international, historical and cultural contexts”

c) *legal comparativists/policy research*: “to classify and learn from the rules, ideals and practice of criminal justice of other jurisdictions” (Nelken, 2012).

The present study, aiming to provide a legal-analytic summary on juvenile justice in light of children's rights, shall be classified as belonging to the latter category. However, beyond the legal analysis I also would like to complete my arguments with the historical and cultural perspective.

I.4.2. Research methods used in this study

In case of a normative comparative research, studying the available literature is inevitable to be able to map the build-up of the juvenile justice system and detect the most important features and issues of it. As mentioned above serious additional difficulties arise following from the lack of understanding of other countries and cultures. David Nelken lists three ways of doing research on other countries' justice systems:

a) *Contact with local experts* results exclusive reliance on their opinion and view on the problems.

b) *Short visits* in countries under examination cover still too short periods to gain real critical knowledge on the opinion of local experts, and emerges cultural points, which may be carefully considered. In this sense, political views may be taken into consideration as well. As Nelken notes, “when we think of experts in our own culture we will normally, without much difficulty, be able to associate them with 'standing' for given political or policy positions.” (p. 151)

c) *Long-term study visits* cover those occasions, when the researcher lucky enough to get funding for living in a foreign country. This instance of 'observant participation' is a perfect opportunity to gain deep understanding on economic, cultural, and political factors influencing a justice system, but sometimes requires investment of sometimes even unnecessarily too much time (Nelken, 2012).

This research was motivated by strong experience in the Hungarian juvenile justice and child protection systems that I had been studying for 3 years already when this research began. At around the

start of my PhD research significant changes were introduced in the juvenile justice system that offered a good opportunity to re-evaluate my previous judgements along with the evaluation of other countries. Regarding to the studies abroad I had the opportunity to take three short visits in Finland, Slovenia and the Czech Republic, get in contact with local experts and visit institutions that aim to deal with juvenile delinquency. Beyond these I also had the opportunity in the past years to 'observe' different aspects of the juvenile justice system of the Netherlands through doing internship at the Netherlands Institute for the Study of Crime and Law Enforcement and the Defence for Children International-ECPAT Foundation. Although the imbalance in opportunities definitely causes imbalance in my knowledge, the magnitude of the expected PhD thesis and the comparative approach set important limits to the information that will be published in this study.

This research is based on three basic methods: (1) literature review (2) open interviews with academics and professionals and (3) institutional visits.

I.4.2.a. Literature review

I used both international comparative works and national studies on particular topics. When reviewing the *literature* I was focusing on two important criteria: where it was possible I used the literature and laws written in the local language (for instance using Dutch and Flamish sources from the Netherlands and Belgium), and I used a variety of sources from scientific literature to court decisions and reports of human rights bodies. The first was important to gain direct information and understanding that does not contain any bias caused by translation, while the second was necessary to gain broader picture about those institutions that are reported to be problematic in light of children's rights. Although it is likely, that governmental reports tell only the best news about recently initiated developments and the available programmes for inmates, while civil organizations focus on reporting about the infringement of local regulations, and violation of human rights, these debates contain more information than only the description of the institutions. It tones the official policy statements and provides input about the relationship between the government and the children's rights organisations in the given society.

I.4.2.b. Interviews with local experts

While written sources are primary in a normative research, as they provide the indirect interpretation of the situation in the given country, personal experiences have also high value. Direct experiences can only be gained through personal visits, and informal or partly informal conversations with academics and professionals. As a part of my research I have visited four European countries apart from Hungary between 4 September 2011 and 15 September 2014. I did short visits (from 2 weeks to 1 month long each) in Finland, Slovenia and the Czech Republic, while in the Netherlands I was able to do a 4,5 months long internship at the Netherlands Institute for the Study of Crime and Law Enforcement, and about one year at the Defence for Children International-ECPAT Foundation. During these visits I was able to collect relevant local literature on the juvenile justice systems as well as interview researchers, local professionals, and civil organizations in each country. I chose to conduct a qualitative study with open interviews and let my interviewees talk about their own role and problems they experience in the system. I used the interviews to verify or disprove the claims and statements of

the scientific literature and other relevant sources. I appointed five target groups: (1) academic researchers who are focusing primarily on juvenile justice in their research; (2) professionals working in child protection; (3) professionals working in juvenile justice, preferably in closed or semi-open institutions, offender supervision or diversion and (4) civil organizations dealing with local justice issues. Table 3 summarises the number of interviews I conducted in each field and each country. I conducted 34 interviews with academics and professionals, of which 7 had been done in Finland, 7 in Slovenia, 11 in the Czech Republic and 10 in the Netherlands (see in Table 3). With regard to my previous knowledge and experience in the Hungarian system, it was not necessary to conduct interviews in Hungary.

Table 3. Interviews

	FINLAND	SLOVENIA	THE NETHERLANDS	CZECH REPUBLIC
researcher	1	2	3	1
child protection professional	2	1	3	3
juvenile justice professional	2	3	3	5
civil organization	2	1	1	2

Although the interviews have not been analysed further, they provided important complementary information to the literature review. The interviews had been used (1) to clarify and update information gained from the international literature, (2) to expand the existing literature, (3) to gain further explanatory background information about the cultural and political context of certain institutions. Part of this information is referred to in this thesis to explain the context or characteristics of problematic institutions.

I.4.2.c. Institutional visits

As part of my interviews have been conducted with professionals working in institutions of juvenile justice I also had the opportunity to visit special closed or semi-open institutions, interrogation rooms and trials, or spaces of crime prevention. These experiences guided me along the process of understanding national juvenile justice systems and helped to discover the comparable characteristics.

I.4.3. Language barriers

An important difficulty of comparative research emerges from the fact that our understanding is limited by the languages and cultures we are able to understand. Despite the relatively large amount of scientific reports on juvenile justice systems in English language, translations of the original expressions may unwittingly deceive the reader. As Jeff Hearn and colleagues pointed out while comparing the Finnish and English systems of child protection, “academic contacts showed clearly that the assumptions, practices and meanings of social policy, social work, child welfare interventions, and

specifically *lastensuojelu* [child protection] and child protection, differed between the two countries" (Hearn et al., 2004). They argue that not only the word itself, but the concept of the institution symbolized by the particular word may be the objective of scientific examination. The difference between the Finnish expression "lastensuojelu" and the English expression "child protection" is only understandable in historical context. This would show, that while in Finland it is used to specify general social care, in England and Wales it means rather the "protection from the unskilled family". This is also underpinned by the legislation: the Finnish Act on Child Protection details the responsibilities and tasks of social services, while the English law also deals with the responsibilities of parents.

The distinct use of particular words in different areas of science and general language users may also cause bias. This is unquestionably true when we are talking about the different expressions used for (different groups of) 'children'. The English word 'child' stems from the Proto-Germanic expression 'kiltham' that referred to 'womb' and childbearing[1]. The wider sense "young person before the onset of puberty" developed in late Old English, and the Oxford Dictionary still mentions it as "a young person of either sex, usually one below the age of puberty".[2] The word 'juvenile' has developed from the Latin expression 'juvenilis'[3], which meant 'young person', and in non-legal context it still often appears in this meaning.

Furthermore, and in connection with the above described language barriers the translation and understanding of international law and standards in a given country or culture may also need to be subject to further examination. Expressions, which describe the requirements the most appropriately in English language, are often not directly translatable to other languages, often because the concept does not exists in the given culture, or it is approached differently by the given language. Concerning the international documents on children's rights it is important to highlight, that the understanding on principle of the 'best interests' of a child has been a problematic issue in children's rights since the drafting process of the Convention on the rights of the Child (Nyitray, 2012). The expression itself does not provide with clear guidance on the nature of the best interests of a child, whether his or her physical, emotional, moral or other interests shouls be taken into primary consideration. The reason of the flexible rule is to leave room for the States Parties to define the best interest along their own cultural values. However, the same flexibility may easily cause bias in a comparative analysis on the determinaton of the best interest in different countries. The target phenomenon has to be analised in merit in order to reveal its true nature. The same applies to the concepts of 'welfare' and 'well-being', which also differ culture by culture, and many other concepts used in international documents.

This comparative study naturally requires translations and therefore cannot avoid paying attention to the different meanings of words. In this study I aim to explain meaning behind the

[1] Online Etymology Dictionary. Retrieved from http://www.etymonline.com/index.php?term=child&allowed_in_frame=0 (27/09/2015)

[2] Oxford English Dictionary. Retrieved from http://www.oed.com/view/Entry/31619?rskey=nJZ3sn&result=1#eid (27/09/2015)

[3] Online Etymology Dictionary. Retrieved from http://www.etymonline.com/index.php?term=juvenile&allowed_in_frame=0 (27/09/2015)

translation as much as possible. It is necessary in order to preserve the clarity, and make the systems' or system elements' compatibility/incompatibility with other countries clear to the reader.

1.5. Summary on the limits of the approach and research methodology of this study

For the purpose of the comparative analysis on the juvenile justice systems in Europe I reviewed the strategies that are used by the contemporary comparativists of this field of study. I selected those studies, which had general, instead of local approach on juvenile justice and multinational instead of national or regional scope, with focus on institutional differences instead of the phenomenon juvenile delinquency, covering exclusively or primarily European countries.

Comparative studies approach juvenile justice form a number of perspectives. Some studies find shared characteristics based on territorial situation within Europe or the philosophical motivation of intervention within the justice system. Some analyse only particular methods or elements of the system in cross-national comparison, encouraging debates about certain structural, cultural or political constraints. In contrary to these, the institutional approach on juvenile justice is focusing on the (legal) structure of juvenile justice, highlighting those regulatory features that define the system as rather welfare- or rather justice-oriented. In the broader understanding, systems may be shaped towards alternative regulatory features, such as corporatist structures, or they may tailor their regulation to limit justice intervention to the minimum or increase it to reach maximum control. The latter approach suited the best to the theoretical expectations as well as opportunities of this research, therefore I chose to use the framework of Winterdyk (2002) in my further analysis. To all models of juvenile justice in his comparative framework a country has been assigned and analysed in depth: (1) minimum intervention model: *Scotland; (2)* welfare model: *Belgium; (3)* corporatist model: *England; (4)* modified justice model: *the Netherlands; (5)* justice model: *Finland*, and (6) control model: *Hungary.*

Taking into consideration the limitations of a PhD-research as well as the international comparative context, I aimed to balance my opportunities and the limitations in order to enhance the quality of the research. I chose to combine literature review with short and long visits. During the visits I conducted interviews with local academic researchers, practitioners in the field and institutional visits in open and closed child protection and juvenile facilities. In the course of the whole study I was aware of the language barriers, and the bias caused by translation with regard to the untranslatable cultural features.

I.6. Statement of purpose and hypothesis

This study aims to develop and apply different comparative techniques and approaches in the research on juvenile justice systems. Applying comparative methodology I will introduce different systems and policies on the treatment of juvenile delinquents, highlighting their strengths and weaknesses as it is reflected in the developmental studies and the international requirements on children's rights. Beyond the scientific interest in how far one can get in comparing justice systems, I aim to provide a model for European comparisons of justice institutions both for future scientific research and for practitioners who work in the field. In my experience joint programmes and policies of the European Union seek understanding on the work of national institutions and therefore they also need clear and structured interpretation on the general operation and particular conditions in different juvenile justice systems. I sincerely hope that my research will provide input to further comparative studies, improve the understanding on each other's systems and help in developing effective communication between justice systems in the European Union.

In order to avoid bias in the terminology I will use the expression 'child' as it is defined by Article 1 of the Convention on the Rights of the Child, according to which "child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

In this study I will concentrate on the examination of the following two hypotheses:

I.6.1. European countries show significant differences in their understanding on 'risk' of youth criminality as well as their policies on control, which can be understood as the result of the discrepant interpretation of child development and children's rights

The dominating idea of the justice policies in Western Europe in the 1990's was based on the human who may be defined by the "risks" he represents in the society. Personal or environmental risk factors that on the one hand negatively affect the life of the offender, endanger public safety on the other hand. Therefore significant pressure had been put on social and criminal policies to eliminate these as effectively as possible. This approach has led to forceful "support" by social authorities and the punishment of those who missed to fit in despite the clear threat applied by the responsible authority. The potential in the person that could possibly have emerged from his strengths remained disrespected. The absolute denial of welfare phenomena, namely support, appropriate and problem-oriented treatment and trust, led to growing fear and institutionalised elimination of risk that materialised in control over everyone who had been evaluated as a potential offender. The harsh policies and punitive practices have been followed by harsh critical voices and the disagreement of professionals and academics. The experts expressed their concerns about the forceful control over disadvantaged people in the society and the violation of their human rights, and the research about persons "at risk" of offending turned slowly to people "in need" of support.

From the mid 2000's juvenile justice policies in Western Europe began to normalise, although this process did not lead to a turning back to the welfare-based policies. It was a rather Hegelian turn of events, where, one could argue in an oversimplifying model, the thesis

(welfare) and the antithesis (punitiveness) are followed by the synthesis of above two. The synthesis aims to reflect to the problems established by both original theses, reconciling their seemingly contradicting statements, and established a new thesis. In this case, the new thesis was that although public safety represents an important value in the society, and therefore it shall be guaranteed, juvenile offenders are in a difficult period of life, where a criminal act should be perceived as signal or mischief rather than serious risk of repeat offending. Fed by the changing focus of developmental research in criminology policy makers began to pay attention to careful education applying age-sensitive evidence-based methodologies, and complex programmes that aim to support juveniles in multiple problematic areas in their lives. This period was not only characterized by the rapid changes in national policies, but rapid development of international policies as well. A number of influential documents have been born between the mid 2000's and the beginning of the 2010's concerning juvenile justice and supporting the developmental idea. Examples are the General Comment of the Committee on the Rights of the Child on Implementing child rights in early childhood in 2005, the General Comment on Children's rights in Juvenile Justice in 2007, the Council of Europe's Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Rec(2006)19 on policy to support positive parenting, Rec (2008)11 on the European Rules for juvenile offenders subject to sanctions or measures and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice in 2010. International focus on children's rights in juvenile justice, and in general child protection as the most important area of the prevention of juvenile offending have never been so intensive like in this period.

In this comparative analysis am interested in how the perception of 'risk' and the manner of intervention in juvenile justice have changed in the past decade. During this research project I aimed to identify what constitutes risk in case of a youth offender in different countries, and how does it affect the application of institutionalised control mechanism assigned to this target group. In this regard two important considerations encounter in the field of justice: public safety and rights of human beings, which have been established based on research. On the one hand, safety of the public became leading political phrase and important part of policing in the European societies. As opposed to the threat of crime the idea of being under surveillance and control became a rather supportable state of everyday life. Traditional agencies of juvenile justice, either expressly or unintended, became the agencies of risk management aimed to control the behaviour of youth offenders, as well as to reduce the risk of repeat offending. These agencies created an important foundation of prevention as well, when focusing on reducing the opportunities of crime in public spaces. To be able to establish the 'diagnosis' of risk, which is calculated automatically based on the combination of risk factors, these institutions became entitled to collect personal data. In some countries the assessment of risk became important in determining the control and/or support perceived as appropriate to the given case, disregarding emotional considerations, such as trust. The comparative examination on the most important factors that define 'risky' in the contemporary societies, and the treatment assigned to those individuals who are targeted by these, will put the meaning of 'risk' to a European perspective and show how different countries percieve this phenomenon in light of the scientific results on child development and the rights of the child.

On the other hand, it is important to see how the behaviour of children, who generally represent relatively low risk in offending, is perceived in the juvenile justice systems. It seems, that in this field, discoveries of developmental research and programmes and the abstract requirements on the rights of the child supported each other's emergence both in child protection and juvenile justice in the past two decades. Both approach children's behaviour and characteristics in a rather rational manner: they highlight vulnerability as a general condition of childhood, but do not underestimate the abilities and will of children as persons. Children do not appear as ever-vulnerable subjects, but actors of the society who should be understood and informed according to their stage of development. A child who commits a crime is not only an actor of crime, but also an actor of his own age, abilities, family background and social circumstances. Any sentence by a court shall be understandable and acceptable for him, and any punishment, measure or treatment applied must respond to his needs. Generally speaking, countries which apply evidence-based programmes that take into consideration the development of children in conflict with the law, reflecting to it in a supportive manner, bring their juvenile justice system in line with the international human rights' requirements. Improvements that respond to the developmental needs of the juveniles, for instance in detention, fulfil a number of specific children's rights requirements as well – regardless to their intent to do so. Providing the appropriate circumstances for a child ensures providing various rights from education to the right to healthy environment. In this doctoral thesis I will examine how these theoretical structures are reflected to in actual juvenile justice systems, and pay attention to the possible bias in them caused by the goal of risk management.

I.6.2. Juvenile justice systems in Central-Eastern Europe are similar in many ways following from the common historical roots, however their contemporary approach is determined by the actual political will and the cooperation between justice and child protective institutions rather than their geopolitical position.

In the last part of my research I will examine the juvenile justice systems of the Czech Republic, Hungary and Slovenia. These countries are often referred to as 'Eastern-European' or 'Post-Socialist countries'. These expressions suggest that a) there are systematic similarities in the juvenile justice systems of these countries and b) these similarities follow from a strong historical-legal as well as social community in the Central-Eastern European region. Undoubtedly, the three countries examined in this Chapter had experienced similar influences during the 19th and the 20th centuries: being part of the Austrian-Hungarian Empire and later the Socialist block under the influence of the Soviet Union resulted in similar patterns in very many parts of life. The common historical experiences and the solidarity within this area of Europe have been reflected most visibly in arts, literature and architecture. However there are typical social settings, such as the residential districts with blocks of flats or the high rate of alcohol-consumption (Junger-Tas, 2012), which result in similar experiences in crime in Prague as they do in Budapest of Ljubljana, it is an already know phenomenon, that actual crime rates do not determine policies. In this part of the study I will examine the validity of the expressions of 'Eastern-European', as well as 'Post-Socialist', assuming that they are not relevant, and therefore avoidable when talking about contemporary juvenile justice systems.

When following the historical perspective it must be clarified, that the Austrian-

Hungarian Monarchy had never had uniform criminal legislation in force in its whole territory, most importantly with regard to the fact that the Hungarian Kingdom and the territories belonging to her had relative independence within the Empire. The complete separation among the above countries' cultural-political orientation has began after the First World War, when nation states have been created in the territory of the former Austrian-Hungarian Empire. The newly 'freed' nations began to establish their own national identities and to create new laws and policies. This procedure could only last until the Second World War, after which the area became the Soviet Union's sphere of interest. Although this resulted in a certain level of ideological influence both in the scientific understanding on crime and deviance and the legislation that was supposed to respond to this phenomenon, the above countries developed relatively independently, especially Slovenia, which, as a member state of Yugoslavia, has declared its independence from the Soviet Union's political influence relatively early. After the political transition of the 1990's the innovation in the justice system got under way, but this time without the pressure of any superpositioned political alliance. In respect of the organisation of juvenile justice this statement is still valid with regard to the relatively minor power and little interest of the European Union in adopting binding rules in justice matters. Conclusively, the countries in Central Europe are free to change and re-invent their juvenile justice systems. When creating or implementing new institutions they do not actually build on the institutional system established under a "common jurisdiction", but on a system, which had theoretical chains about hundred years ago, and since these were broken up, they have developed organically, shaped by cultural, economic and political values and interests.

Accordingly, the three countries have chosen three different paths in dealing with juvenile offenders. The contemporary juvenile justice systems show significant discrepancies in the application of age limits, the institutions that characterize the system, the target areas of policies and in their sentencing practice. These differences suggest that the three systems belong to three different juvenile justice models, and apart from some similarities, they are on different levels towards the implementation of the Convention on the Rights of the Child. In this regard there is lack of evidence to the common model of juvenile justice systems in this area, and the theoretical assumption of 'Post-Socialist' common sense is invalid in respect of this field.

CHAPTER II

KEY RESEARCH FINDINGS IN SUPPORT OF A CHILD-FRIENDLY REGULATION ON JUVENILE JUSTICE: DEVELOPMENTAL PERSPECTIVE IN PSYCHOLOGY AND CRIMINOLOGY

The most significant crossroad of psychological, criminological and legal research is probably the field of control of deviant behaviour. While psychological research studies the normal and pathological patterns of development of human beings, criminology examines their behavioural patterns and trends and the impact of formal and informal reactions to them. The results of research in these two fields constantly facilitate the development of better regulation. Sources of international law and advocacy regularly reflect to the latest discoveries and research results, and encourage states' legislative bodies to take these into consideration when adopting new laws, which concern juvenile offenders. An introduction on this topic is relevant and necessary in this research because it helps to understand and distinguish concepts and phenomena in international law, such as 'child-friendly justice', 'children at risk' or 'children in need', and puts current developments in this field into context.

In this Chapter I will introduce the most important results of psychological and criminological research highlighting their relevance regarding to the control of juvenile criminality:

- The *generalpsychological perspective* is investigating the roots and supportive factors of 'normal' development in contrary to those behavioural patterns which shall rather be categorized as pathological. In order to be able to conclude statements about what is not normal in developmental sense one should be able to explain the expected 'normal' behaviour in certain ages. Discovering the reasons of deviant behaviour is important to improve relevant methods of preventive intervention on any developmental level and in context of various institutional settings.
- The *criminological perspective* on development aims to give answer to the question *what went wrong* in the lives of those children (or adults) who committed crimes. It focuses on three main issues: (1) the development of offending and antisocial behaviour, (2) risk factors at different ages, and (3) the effects of life events on the course of development (Farrington, 2002). The approach of the criminologist steps forward from its psychological foundations, and uses multidisciplinary methodologies in order to be able to investigate the broader picture of the causes and consequences of getting involved to justice.

II.1. Developmental psychology in brief

According to Philip David Zelazo (2013), developmental research aims, in classical terms, "to understand the *history, origins, and causes* of behavior and age-related changes in behavior, clearly recognizesthe wide range of relevant levels of analysis, as any single issue

of *Child Development* or *Developmental Psychology* will reveal". In this view human behaviour is understood as embedded and defined by a dynamic system of relations. Beyond this, claims Zelazo, developmental psychology means much more nowadays: "the process of constructing a complex multilevel characterization of behavior as it unfolds in time across a range of time scales, from the milliseconds of reaction time (RT) to the days and weeks of microgenetic studies to the years of childhood, the decades of the human lifespan, and even beyond, to multiple generations".

Developmental psychology roots back to the research in biology and experimental psychology in the second half of the 19th century. While the focus points of biological research were mainly the successive states in development and the processes in which the individual moves from one stage to another, experimental psychologists were interested in the process of apprehending the world and the nature of human responses to environmental stimuli. The first pioneering works appeared in the turn of 19th and 20th century, when developmental psychology emerged from its two roots. These early studies were engaged in discovering brain development, memory and perception, and cognitive and social development of children. The middle period of developmental psychology started after the First World War, when research methodology began to grow out of questionnaires and much attention had been paid to proper data collection and the experimental methodologies appeared. Attention of scientists of this period shifted slowly from the passive view of maturationism towards the active, participatory view of environmentalist regarding early childhood. Along these changes sociological approach on development has also gathered ground. In the modern era (from the 1960's to present) research has turned to studying newborns capacities, developmental processes in the infant period, understanding the role of external impacts and congenital devices with language development. These research projects were supported by the technological achievements as well, which, for instance, made it possible to observe cerebration. Beyond these studies, research on social learning, parental role in socialisation and cognitive development are also important areas of developmental research nowadays (Collins & Hartup, 2013).

In the middle of the 20th century Piaget published his theory about the cognitive development of children (1936). He saw cognitive development as staircase, where stairs are built upon each other. The basic stair is adaptation, where children change in order to function more effectively in their environment. The second stair is the assimilation, when children apply their existing capabilities in similar situations, while in the next stage children learn to modify previous strategies or skills in order to act upon new demands (accommodation). Reaching the last step, the so-called equilibration implies that the child has developed a self-regulatory process, in which he or she can produce effective adaptations (Dehart et al, 2004). According to Piaget, the role of the environment is to provide with a safe and inspiring environment for active exploration, through which he or she may step forward from one stair to another. The theory was criticized because it describes cognitive development as a one-sided process, in which the responsive reactions of the caregivers do not play an influential role (Corsaro, 2011, 14-15). Despite the critiques the theory of Piaget is still one of the most influential model of children's interpretation of accommodation to the world around them. It is one of the six major contemporary theories on human development, namely (1) Piaget's Theory of Cognitive Development; (2) Information-processing Theory; (3) Socio-cultural

Theory; and three types of the (4) Social and Emotional Developement Theories: a) Psychoanalytic (Freud); b) Social Learning (Bandura) and c) Adaptional Theory (Bowlby). Table 4 presents a short summary of the main characteristics of these theories.

Table 4. The six most important theories of developmental psychology

	Piaget	**Information-processing**	**Socio-cultural**	**Psychoanalytic**	**Social Learning**	**Bowlby**
Normative/ individual development	normative	normative	both	both	individual	both
Environment/ heredity	heredity	Environment	Environment	both	Environment	both
Stages	yes	no	yes	yes	no	yes
Early experience	no	no	no	yes	no	yes
Specificity	Domain- and culture - general	Domain-specific, culture-general	Domain- and culture - specific	Domain- and culture - general	Domain-specific, culture-general	Domain-specific, culture-general

Source: Dehart et al., 2004, p. 22.

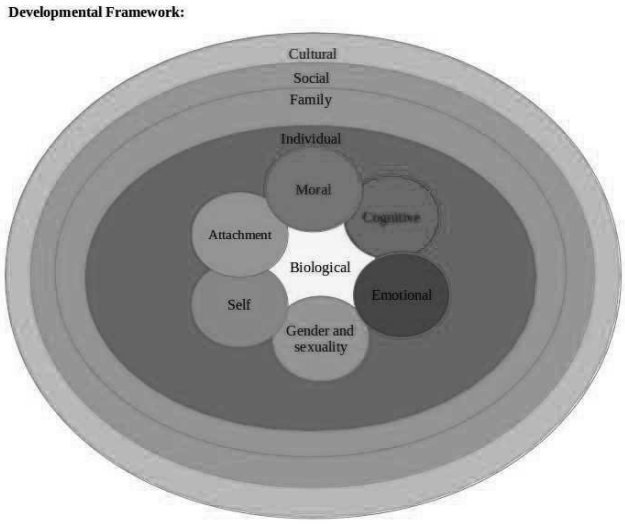
In the followings I will further explain the scientific perspective on human development with special focus on the role of the primary caregivers.

II.2. Psychological perspective of development - reflecting to children's needs

The developmental perspective provides both individual and interpersonal explanations of children´s understanding and behaviour in particular ages. Whilst the individual development describes how the child is interpreting the environment and others' behavioural patterns, the interpersonal relations show how hierarchical (e.g. child-caretaker) and peer to peer relations influence the child's behaviour.

Psychological literature distinguishes between different stages of development in childhood. These stages frame an estimated developmental line in the child's life based on biological facts and psychological tendencies. These are the (0) prenatal period; (1) the infancy; (2) the toddlerhood; (3) the early childhood; (4) the middle childhood and (5) adolescent ages (Dehart et al., 2004, p. 53). Along this simplistic frame of development it is easier to highlight needs and skills that children typically have in particular ages. In addition to these cultural traditions, socio-economic factors and family background have to be considered as well when studying the development of a child (see Figure 1.).

Figure 1. Developmental framework.



Source: Wenar & Kerig, Patricia, 2011, Figure 1.2., p 5.

The development of children begins already in the embryonic period, which is a very susceptible period of pregnancy. The nervous system begins to develop around the second week, and from the ninth week the embryo becomes a moving, sleeping, waking being (Dehart et al., 2004). Environmental influences may cause major effects already in the prenatal period: substance abuse, such as alcohol, tobacco or drug use of parents may cause serious problems in the central nervous system (e.g. fetal alcoholic syndrome (*FAS*) or minor physical anomaly (*MPA*)), or influence the IQ or the baby, but stress and malnutrition of the mother are also risk factors of the healthy development (Dehart et al., 2004). Beyond the consequences in the development and health of the child, these negative influences may play significant role in developing an unsuccessful lifespan as well. For instance, smoking during pregnancy may lead to externalizing behaviour of the child, FAS significantly increases the risk of delinquency, and MPA appears to be a predictor of violent behaviour (Peskin et al., 2012).

Infancy is closely connected to the prenatal period, because the development of the nervous system continues in this period. Babies begin to use their abilities for survival, such as sucking reflex or crying, tend to act in organized sequences (turning towards the sound) and slowly detect relationship between actions and consequences (Dehart et al., 2004). The first signs of attachment between the baby and the caregiver appear in this period. Mary Ainsworth and colleagues (1979) discovered three different patterns in the behaviour of babies, based on which they established three theoretical categories of attachment: (1) Secure attachment; (2) Anxious-resistant attachment; (3) Anxious-avoidant attachment. This list was later completed by Main and Solomon with the fourth type of Disorganised attachment. The method of studying these attachment patterns was designed by Mary Ainsworth. It is called Strange Situation Method, which refers to the phase when primary caregivers suddenly leave the observation room after playing for a while with their infants. In the absence of the caregiver a stranger enters and tries to contact the child until the caregiver returns. The quality of the relationship between caregiver and child is evaluated based on the encoded behavioural patterns of the infant. In case of the secure attachment, infants tend to rapidly explore the toys

and share playing with the caregivers, while they readily confront with the caregivers when they return. Anxious-resistant infants have difficulties with exploring the toys as well as settling up reunion. They also behave confused with new people. Anxious-avoidant children explore independently and play alone, but they do not show big difference in sharing the play with either strangers or caregivers, and they are likely to turn away from them. The disorganized group of children shows sequential contradictory behaviours and appear to be dazed and disoriented, behaving without any coherent strategy (Dehart et al., 2004, p. 211). Infancy is a highly sensitive period of life, but according to Dehart and colleagues (2004) the early ages do not completely determine the rest of the development and genuine changes may occur. Change remains possible even after early deprivation.

Toddlerhood is the period when children move from total dependence towards independence, and self-reliability. They develop their sociability, first only as a response to the parent's expectations, but later as an internalized skill. Children in this phase develop a wider range of emotional responses, such as awareness of standards of behaviour, deviation anxiety, shame and deviation anxiety, as well as positive self-evaluation (Dehart et al., 2004, p. 211). In *childhood,* where preschool years begin, children start to understand the social world around them, but still depend on the help of their parents in solving complex problems. They begin to understand motives and intentions of people and build relationships with peers. Although the influence of peers and siblings becomes important, this age is characterized by the central role of the developing self and sex-typed behaviour: children aged 4-5 start to experience man- and women roles, such as instrumentality and expressivity (Dehart et al., 2004, p. 211).

The *middle childhood* is the time of elementary school years, where children begin to build the coherent self-concept: they become intimately tied to other people, and continue to apply gender stereotypes. Peer groups are segregated according to genders, and their structure looks accordingly: while girls maintain more intimate relationship with a smaller group of girls, boys tend to organize larger groups around common activities. These non-subordinate relationships become more important with time, when children start to identify themselves with the group and to demand e.g. loyalty and understanding towards their friends. This is the age where the skills of logical reasoning and classification develop, together with information-processing abilities. Children in this age are able to learn with different strategies in school (didactic learning) and in peer groups (cooperative learning), which also develops the differentiation between practical and academic understanding (Dehart et al., 2004).

Adolescence begins around 12 years and last until about the 18 year, however these age boundaries seem to respect legal limits rather than biological stages of development. As Rolf Loeber and colleagues (2012, p. 361) conclude, “age 18 appears irrelevant with respect to most of the above processes that are ongoing around that age, including incomplete brain maturation”. Accordingly, this age group may be split to three sub-categories: early adolescence (12-13), middle adolescence (14-16) and late adolescence (17-18), and possibly be expanded up until 24-25 years, where the brain maturation ends (Loeber et al., 2012, p. 346). Characteristics of the early years are mainly influenced by biological changes and independence from parents. Sexual hormones begin to work in this period, and beyond sexual maturity this implies many other developments, such as changing of appearance and neurological functioning. These changes go hand in hand with increased need of rest and

sleep, as well as appropriate environment, which helps to deal with the possible problems following from the new body image and new behavioural patterns in the peer group. Later, from the middle childhood children already start to prepare to independence and adult life. In order to complete this maturing process they have to become able to think about personal relationships in mentally constructed concepts (such as honesty and fairness), think systematically and logical, and develop the ability to think of hypothetical solutions to a problem and to formulate a systematic plan for the best solution (Dehart et al., 2004). Egocentrism is also typical in this period, when adolescent tend to think that their experiences and problems are unique, and they feel invulnerability to risks and physical danger. The role of the family seems to be less important concerning the movement toward complete independency, but without orientation and support in this age, children may over- or underestimate their own abilities and opportunities (Dehart et al., 2004)

II.2.1. Individual characteristics

Results and perspectives of modern psychological-biological research allow us to get a deeper insight into the functioning of human brain and body, and to understand better what it actually means in biological terms that we perceive as deviance. It is important to highlight, that these research results do not intend to suggest that there is a direct connection between physical-biological characteristics and deviance or offending. They only suggest that some types of damages or abnormalities have considerable effect on the lifespan, and with regard to their impact on behaviour, may be seen as risk factors of specific deviant behavioural patterns. More importantly they draw the attention to the fact that damages are consequences of maltreatment or malnutrition of the embryo or infant that could be prevented. As I have mentioned in the previous subchapter, neurobiology provided evidence on the effect of those damages caused to the embryo during pregnancy or in early childhood. Neuroimaging research confirmed the possible connection between brain abnormalities and socialisation and moral development of a child (Peskin et al., 2012). Reduced activity of specific brain parts, or lack of connection between specific regions of the brain are both risk factors to reduced skills of regulation of emotions or processing given types of information. Thus, inability for empathy or processing others' emotions may for instance lead to imperfect socialization and through this it may lead to deviant behaviour, such as delinquency. As endocrinological research pointed it out, juvenile delinquency is often associated to hormon levels, such as cortizol level (responsible for fear or stress response) or testosteron level (responsible for reward-seeking behaviour) (Peskin et al., 2012). Moreover, according to Peskin and her colleagues (2012) also genetic characteristics (e.g. aggression) influence the latter delinquent behaviour, however the influence of these are not balanced during the life span: most of the studies in this topic found that genetic influences are higher in adolescence, while the environmental factor tend to be more important in childhood. An example to the influence of the genetic characteristics on adolescent behaviour is provided by the Dunedin Multidisciplinary Health and Development Study led by Moffitt and Caspi. They discovered that deficiencies in MAOA (the gene encoding monoamine oxidase A, which is located on the X chromosome) activity are linked with aggression in humans. The high level of the MAOA gene implies the child is going to be less likely to develop conduct disorder compared to those

who have low level expression of the genotype (Caspi et al., 2002). This means, that those children who do not have enough genetic support to overcome the negative effects of abuse are more likely to develop antisocial behaviour or aggression through the life course. Abuse is especially harmful if it happens at the early childhood. Furthermore, the research of Moffitt and Caspi also appears to provide strong evidence on the negative effect of certain parental child-raising methods, which further increase the risk antisocial behaviour of the child (Simons et al., 2012).

In contrary to the above studies, research on resilience attempts to unfold those factors in the child's personality or environment, which prevent the emergence of antisocial behaviour even in disadvantageous circumstances. 'Resilience' refers to a kind of 'invulnerability', a class of phenomena characterized by good outcomes in spite of serious threats to adaptation or development (Jaffee et al., 2007; Masten, 2001). It refers to the phenomenon that researchers have discovered when looking at the consequences of maltreatment of children, namely that some children do not respond to maltreatment and other environmental disadvantages on the same way like others. Studies on resilience have identified factors at the level of the child, the family, and the child's broader social network that moderate the effects of child maltreatment, such as high ego-control and ego-resiliency, high self-esteem, and above-average intelligence, that they tend to attribute successes to their own efforts, gender (females are relatively more resilient than males), physiological stress reactivity or the child's relationships with family members and other members of their social network (Jaffee et al., 2007). Jaffee and colleagues (2007) analysed resilience using the sample of children under age 5 of the Environmental Risk (E-Risk) Longitudinal Twin Study. The researchers defined resilience on the basis of children's history of maltreatment, sex (with regard to the fact that boys' show generally higher level of antisocial behaviour) and their teachers' reports of their antisocial behaviour. They found association between individual, family and neighbourhood characteristics and resilience. Those children who lived in lower-crime neighbourhoods, where social cohesion and control were typical characteristics and their parents did not have substance abuse problems, were more likely to be resilient than non-resilient to maltreatment. The level of resilience of those children who lived in problem-neighbourhoods, suffering from various stressors, were limited, and only individual strengths supported their adverse reaction to maltreatment. In terms of sex, researchers concluded that while boys who had high IQ and experienced relatively low level of antisocial parenting were significantly more likely to be resilient than they were to be non-resilient to maltreatment, there was no association between these factors and resilience by girls. These results reveal that children who function well in spite of maltreatment experience specific combinations of supportive factors.

Masten (2001) argues, that "research on resilience phenomena has changed the nature of the frameworks, goals, assessments, strategies, and evaluations in fields of prevention and treatment". Actors of prevention aim to promote competence and reaction to symptoms, while strategies focus on the reduction of risks on the one hand, and facilitation of protective processes on the other hand. The 'Signs of safety approach' is a good example to the latter: in contrary to the classical paternalistic approach of child protective mechanisms, it approaches problematic families as partners in improving the already existing strengths and competencies in the family environment (Turnell & Edwards, 1997). Assessment of problems and resources

focuses accordingly on the family's life and experiences that can be built upon in resolving maltreatment (e.g. exceptions to neglect or abuse, family member representing safety) in contrary to the risk-assessment approach of paternalistic systems.

II.2.2. Role of the family

When looking at development from a psychological perspective it becomes obvious that the family environment determines the child's life from the prenatal stage. Having a caring and warm family is therefore the most important factor in fostering the healthy development of children. The interactions stimulate behavioural trials, language development, and cognitive skills, especially in the very beginning of the childhood. Primary caregivers (usually mothers) play central role in this micro-system of care, feeding and inspiration for children. However, as mentioned before in the critics of the theory of Piaget (Corsaro, 2011, p. 14-15), relationship between the baby and the caregiver(s) should not necessarily be seen as a unidirectional process of upbringing. Based on the results of contemporary research, family should rather be considered as a system of interconnected relationships between its members, which is a dynamic, open system, and subject to change as well as continuity (Dehart et al., 2004, p. 53). Behaviour of a parent affects the behaviour of the child, but that is also true in the opposite direction: the behaviour of the child may evoke certain reactions from the parents, which may also become practices and parenting styles with time. The following subchapter aims to give insight into role of family environment and parenting in the child's life.

Family structures, parenting practices and living conditions that are likely to increase the risk of later deviance represent a well-researched phenomenon in behavioural sciences. The structure of the family influences the environmental circumstances, through which also the relationship between parent and child. Research proved that in broken families (single parent families, stepfamilies, godparents, etc.) the risk of delinquency is 15% higher than in stable families (Simons et al., 2012, p.187). However, researchers point out, that this result does not necessarily mean that the broken relationship between the caregivers is a serious risk factor itself. Other factors, such as relative poverty, stress, frequent moving, living in disadvantaged areas and changing jobs often appear to be accumulated problems in these families, providing a more direct effect on child rearing practices than the fact of separation. Simons and colleagues (2012) also suggest that the various explanations on the roots of behaviour are complementary rather than competitive, and if the research focuses to only one aspect of parenting, that may lead to irrelevant conclusions. In this context the increased risk of child abuse and deviant behaviour of children derives from disadvantaged socioeconomic situation (Wenar & Kerig, 2011).

Parenting styles are not only depending on the extraneous circumstance but also on the persuasion of the parents, as for instance whether they prefer control instead of supportive relationship with the child, or vice versa. Ranschburg (2010) categorized parenting styles along these two dimensions (see Table 5). The first dimension is the dimension of control, showing the gravity of demands towards the child represented by an imaginary scale from controlling to permissive behaviour. The other dimension shows the emotional input of the parents into the relationship with the child, which tends to be rather warm and supporting or

cold and dismissive. The combination of the two dimensions results in four attitudes of parenting behaviour: (1) warm-permissive (*permissive*), (2) cold-permissive (*indifferent*), (3), warm-controlling (*autoritative)* and (4) cold-controlling (*autoriter*). These are not only characterizing the behaviour of the parent, but predicting the behaviour of the child as well. Whilst the two first types predict rather aggressive behaviour, the latter two contribute in the development of a rather depressive personality. These behavioural patterns may be understood as consequences of the quality of attachment between parent and child (Ainsworth et al., 1979). The warm and supportive parenting behaviour enables the child to develop secure attachments and (with the help of this) to enter into the social world later on without problems. According to Ranschburg, in the ideal situation parents never use physical punishment, but give positive responses if they did something well, and explain their problems regarding those situations, in which the they did something wrong. The warm parents speak often with their children and support them in difficult situations. Based on reseach, the autoritative parenting style appears to be the most effective, because it provides support but keeps the actions of the child within certain behavioural frames.

In contrary to this, the cold and often demanding parents try to control their children through unexplained behavioural rules, the violation of which results in yet again unexplained and harsh punishment. Since the good behaviour is the minimum standard, reward comes rarely, because the parent does not see his or her role in this situation where everything seems to be under the (self-) control by the child. Children who experience this style of parenting become whether passive, reserved and distrustful towards adults or aggressive and antisocial. Depending on the personal characteristics of the child these attitudes can be rated as conduct disorders.

Table 5. Dimensions of control and emotions in family education

		emotions	
		Warm (*responsive)*	Dismissive (*not responsive)*
control	Controlling (*demanding)*	**Autoritative**	**Autoriter**
	Permissive (*without demands)*	**Permissive**	**Indifferent**

Source: Ranschburg, 2010, Figure 3

In the borderline of psychology and criminology, Patterson was the first who gave detailed explanation on the connection between antisocial behaviour and parental maltreatment (Laub, 2011; Ranschburg, 2010). According to his idea, children are in constant interchange with their environment. When they get negative reactions to their actions they still tend to misbehave or show aggression. As a response to the persistent misbehaviour the parent usually applies punishment, and the child learns that aggression is the way to achieve goals. This pattern turns to training for antisocial behaviour over the childhood that conditions the child to enforce his will through aggression and violence. On the other hand it is paralleled by the lack of training to prosocial skills. Children who experienced this type of child-rearing are more likely to start delinquent behaviour early (Patterson et al., 1989). In order to test the

validity of the theory Patterson and colleagues studied four different samples of children in the 1980's, and concluded that aggressive parenting patterns indeed increases the child's antisocial activity significantly, while improving parenting skills leads to decreased antisocial activity of the child. According to the researchers parent trainings that give parents specific instructions in ways to improve family management practices are the most successful regarding the elimination of antisocial patters, when the intervention is applied to the parent of younger children (Patterson et al., 1989).

Failures of parenting practices may lead to physical and emotional abnormalities. Consequences of maltreatment of children that have been identified by research have become leading international issues facilitating the promotion of the wellbeing and health of children. According the definition of the WHO (2006, p. 9) one may talk about *maltreatment*, in case of "all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power". The WHO lists the following types of abuse: (1) physical abuse; (2) sexual abuse; (3) emotional and psychological abuse and (4) neglect. In addition to this, psychological research found that the (5) exposure to domestic violence implies similar effects to the other types of maltreatment (see Table 6, Wenar & Kerig, 2011, p. 460).

Physical abuse covers acts of "intentional use of physical force against a child that results in – or has a high likelihood of resulting in – harm for the child's health, survival, development or dignity" (WHO, 2006, p. 10). Physical abuse has many forms from the mistreatment of infants to teaching discipline to "handful" children. The majority of the victims are younger children or those who already live with behavioural difficulties or disabilities, where violence only increases their problems. Physical abuse has serious consequences both in biological and in emotional development. Serious abuse, such as shaking babies may cause neuropsychological consequences which are irreversible. Brain damage may even result in lower IQ and inefficient (overcontrol or undercontrol) emotion regulation. Physically abused toddlers are more likely to show anxious-avoidant attachment (Ainsworth, 1979) and show delay in self-recognition. Children later on are more likely to show extremes of externalizing or internalizing behaviour. Following from their difficulties with emotion-regulation, physically abused children will not be able to handle interpersonal problems correctly, and may immediately react aggressively in a conflict situation. With regard to their aggression it is also more likely that they become excluded from peer groups, and will have aggression-problems in their love relationships (Wenar & Kerig, 2011).

Neglect includes "both isolated incidents, as well as a pattern of failure over time on the part of a parent or other family member to provide for the development and well-being of the child – where the parent is in a position to do so – in one or more of the following areas: health; education; emotional development; nutrition; shelter and safe living conditions" (WHO, 2006, p.10). Because of the lack of appropriate stimulation, neglected children often have cognitive and language delay compared to their non-abused peers. Concerning to their delay, their poor performance and hopelessly unsuccessful participation at school is predictable. The insecure attachment to the caregiver following from the lack of interaction shows in their later social relationships, where they are mostly avoidant, unassertive and withdrawn, having an internalizing personality (Wenar & Kerig, 2011).

Psychological or emotional abuse involves both isolated incidents, and "a pattern of failure over time on the part of a parent or caregiver to provide a developmentally appropriate and supportive environment" (WHO, 2006, p. 10). Rejecting, degrading, terrorizing, isolating, dissocializing and exploiting behaviour of parents are equally dangerous in terms of emotional abuse. The message of this parental behaviour is that the child is worthless, unloved and inadequate, which implies depression of children and withdrawal from social interactions. It occurs usually together with other types of abusive behaviour.

Sexual abuse means "involvement of a child in sexual activity that the child does not comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws and social taboos of society" (WHO, 2006, p. 10). In cases of sexual violence victims are usually girls, who are more likely in their older childhood or adolescence, while perpetrators are usually family members. This duplicates the already serious emotional stress and results in shame and hiding (Wenar & Kerig, 2011). Children who experienced sexual violence are more likely to feel powerless and blame themselves while internalizing their anxiety. Children abused in early ages may experience delay in development, while older children often have depression or commit suicide. Poor performance in school because of the low task orientation and learning disorders is also typical, and often lead to avoidance of school. Sexual traumatisation also often leads to inappropriate sexual behaviour: sexual promiscuity in girls and coercion in boys.

Generally people are likely to forget about the impact of the witnessing of violence as a factor of endangerment, however, according to the relevant research exposure of domestic violence may be the same traumatic experience as being the actual victim of the perpetrator (Wenar & Kerig, 2011). Insecure attachments to the caregivers, internalizing problems, self-blame and fearful reactions to the violence are likely, similarly to the directly experienced physical abuse. Children traumatized through witnessing domestic violence are more likely to accept violence between partners as normal behaviour or to presume their own responsibility in causing the situation, which ended up in violence. Good relationship with the caregiver may influence the child positively and reduces the above harms.

Table 6. Developmental summary of the effects of different forms of maltreatment

	PHYSICAL ABUSE	NEGLECT	PSYCHOLOGICAL ABUSE	SEXUAL ABUSE	EXPOSURE TO DOMESTIC VIOLENCE
	Infancy and early childhood				
Cognitive	Cognitive delays	Most severe cognitive and language delays	Cognitive delays	Cognitive delays	Cognitive delays
Emotional	Avoidant attachment, limited understanding of emotions	Ambivalent achievement	Anger and avoidance, serious psychopathology	Anxiety, withdrawal	Anxiety, separation fears
Social	Fearfulness	Avoidance,	Withdrawal,	Inappropriate	Aggression

	aggression	dependence	aggression	sexual behaviour	
	Middle childhood				
Cognitive	Cognitive, language delays, learning disorder	Most severe cognitive deficit	Low achievement and IQ, poor school performance	School avoidance, learning problems	Poor academic performance
Emotional	Poor affect recognition, externalizing (boys), internalizing (esp. girls)	Dependence, lowest self-esteem	Depression most likely, aggression	PTSD, fears, low self-esteem, depression, regression	Depression, anxiety, externalizing, PTSD
Social	aggression	Isolation, passivity	Poor social competence, aggression, withdrawal	Inappropriate sexual behaviour, (re)victimization	Aggression
	Adolescence				
Cognitive	Low academic achievement	Lowest grades, most likely to be retained	Low achievement	Poor academic performance	Truancy, poor performance in school
Emotional	Depression, low self-esteem, conduct disorder, violence	Internalizing, externalizing, low initiative	Delinquency, depression, poor emotion regulation, eating disorders, personality disorder	Depression, suicide, substance abuse, running away	Depression, suicidal thoughts, delinquency
Social	Aggression	Poor social skills	pessimism	(re)victimization	Violence in dating relationships

Source: Wenar & Kerig, 2011, Table 14.3, p. 460

The General Comment No. 13 of the Committee on the Rights of the Child on the right of the child to freedom from all forms of violence applies a broader definition to violence against children than the definition of the WHO. This definition includes *harmful practices*, such as female genital mutilation, or forced marriage, which may also be listed among forms of violence within the family (point 29). Family violence may also lead to *self harm*, including „eating disorders, substance use and abuse, self-inflicted injuries, suicidal thoughts, suicide attempts and actual suicide" (point 28). This form of violence has also been highlighted by the Committee.

II.2.3. Peer relations

While family environment has a basically exclusive role in the early stages of development, the importance of peer relations emerges in the course of the life span. As it was

mentioned above, children begin to build meaningful peer relationships in middle childhood, thus about in primary school. By the age of 11 they occupy about as much time as the parents do, representing a very different type of relationship. Children are equal in status compared to each other, where they expect fairness, reciprocity, cooperation and learn to manage interpersonal aggression (Dehart et al., 2004). Belonging to a group and solidarity to its values, beliefs and behaviour-standards becomes part of the self-definition.

There are two typical stages of the formation of peer relations: (1) the neighbourhood and (2) the school. According to Dehart and colleagues (2004, p. 58) the neighbourhood is the place of collective socialization in which adults provide role models. In contrary to this, school represents cultural norms and values of the whole society, materialises individual differences and creates a phenomenon of success in the given society.

Violence among peers is a form of violence that was highlighted in General Comment No. 13. According to the Committee on the Rights of the Child „this includes physical, psychological and sexual violence, often by bullying, exerted by children against other children, frequently by groups of children, which not only harms a child's physical and psychological integrity and well-being in the immediate term, but often has severe impact on his or her development, education and social integration in the medium and long term" (point 27). The Committee further expressed its concerns about addressing peer violence and youth gangs with the punitive approach that is, arguing the evem more violence cannot be a proper intervention against violent behaviour. Peer violence can appear through information and communications technologies. Besides other being recipients of harmfum information, children may be victims as well as astors of bullying or harassing others, playing games that negatively influence their psychological development, creating and uploading inappropriate sexual material, providing misleading information or advice, and/or illegal downloading, hacking, gambling, financial scams and/or terrorism (point 31).

The role of community in engaging in antisocial behaviour has been subject of criminological research since the beginning of the 20th century, when the Chicago School of Sociology first attempted to map criminal patterns and highlight high-risk areas in the city. They concluded that deprived districts of the city representing the lower classes of the society produce significantly more antisocial behaviour than others (Farrington & Welsh, 2007, p. 84). This research was followed by a number of cross-sectional studies which aimed to provide an explanation on how community determines the engagement in criminality (Farrington, 2003b). One of the most important subjects within this area of research was, and still is the research on gangs of youth. The fact that child and juvenile criminality happen primarily in group-contexts: children usually commit crimes in peer groups or together with (young) adult offenders underpins the importance of this area of research.

Studies on this subject uncovered important facts about the relations that reflect to the discoveries of developmental psychology as well:

1. Young people tend to offend in small groups instead of 2-3 instead of large groups (Farrington & Welsh, 2007, p. 80);
2. Committing crimes can become a bond between the members of the group – those who desist offending tend to stop going out with group (Farrington & Welsh, 2007, p. 81);
3. Young people offend more when being member of a gang (Farrington & Welsh, 2007,

p. 81);

4. Juveniles tend offend together with their siblings or older brothers (Farrington & Welsh, 2007, p. 82).
5. Aggression leads to rejection from peer groups, while the lack of peer relations is a prelude to deviant peer group membership (Patterson et al., 1989; Farrington & Welsh, 2007, p. 82).

These observations on the connection between peer relations and delinquency put the understanding on 'gangs' in criminal sense to a different perspective: they put deviant behaviour and delinquency into the dynamic perspective and introduce it as a changeable part of childhood that is a normal part of adolescent behaviour.

II.2.4. Institutionalisation

Children who have no families, or their families are not able to support them, are taken to alternative care in every country. Alternative care refers to a variety of institutions, like foster care, children's homes, orphanages, etc. It includes placement in both families and institutional care. The most common reasons of placement in residential care are (1) poverty of the family, (2) violence within the family, (3) disability of the child that the family cannot handle at home, (4) family catastrophes, like diseases and (5) the lack of appropriate alternative (Pinheiro, 2006, pp. 185-186). It is a universally accepted fact that placement in institutions do not solve the problems of the child, in fact, it adds to the existing problems.

Developmental studies prove that damages caused by institutionalization of children are acute, in particular when it happens under the age of four (Pinheiro, 2006, pp. 189-190). Parental attention, and meaningful attachments cannot be replaced by the care of institutional staff, which shows in the children's developmental delay, physical health, disability and potentially irreversible psychological damage, although the latter is highly dependent on the length of the period spent in institution. Nelson and colleagues (2007) proved in the Bucharest Early Intervention Study, that infants who suffered early institutionalization develop differently when later placed into foster families from those who have remained in institutions. The project was implemented by three U.S. researches and a Romanian NGO that undertook the task of establishing foster care network in Bucharest. The purpose of the study was to determine whether the placement to foster care from institutional alternative settings has a positive developmental impact on the behaviour and the brain of infants of 6 and 31 months old. 136 children participated in the study, all of them measured beforehand. 68 children were randomly assigned to placement in foster care, while 68 remained in institutional care. As expectable, the research showed that foster care has positive impact on brain development and proved that foster care supports the recovery of early deprivation experienced in institutional settings. The results of the study are unique in neuropsychology because they delivered important information about the power of attachment in infancy, and further proof on the importance of quality care in the early developmental stage. The lack of special programmes and assistance available for older children living in institutions increases the risk of deterioration of their psychological and physical health; therefore psychologists are of huge importance in these settings.

Apart from the general impacts, there is a huge risk that children in institutions become victims of violence. According to Herczog (2009b, p. 351) the most important risk factors of victimisation are (1) the unfortunate placement in a particular group, (2) the history of victimisation, (3) gender, since girls are rather subjects of sexual abuse while boys are more likely to become victims of physical abuse, (4) disability, which increases the vulnerability, (5) age and (6) ethnic background. Institutional violence means every method, procedure and individual reaction to the behaviour of the child living in institutional care, that is abusive or negligent, puts the health, safety, physical or emotional wellbeing of the child in risk, exploits the child in care, abuses the vulnerability of the child, restricts or prevents him or her in enforcing his or her fundamental rights (Herczog, 2009b). This definition obviously refers to all above-mentioned forms of violence, namely physical and psychological abuse, neglect, sexual abuse and exposure of violence. Perpetrators and victims of violence in institutions can be both adults and children. The most serious forms of institutional violence include violence by staff of residential justice institutions that targets marginalized or disadvantaged children, who are discriminated against and who may lack the protection of adults responsible for defending their rights and best interests. Above the general harmful nature of such practices it may even fulfil the criteria of torture and inhuman or degrading treatment or punishment (General Comment No. 13, point 26).

Paulo Sergio Pinheiro (2006, p. 190) pointed it out in his World Report on Violence Against Children, that institutionalization fuels the cycle of violence as well. Children in institutions are more likely to cause self-harm, aggression towards others or become involved in crime, substance abuse. Emotional vulnerability of girls raised in institutions can easily lead to victimisation of prostitution and forced labour by loverboys and child traffickers (ECPAT International, 2015, p. 47-48). Children raised in institutions are also more likely to come in conflict with the law, as it is proved for instance by a study in Northern Ireland, where 25% of those in custody are admitted directly from residential care (Pinheiro, 2006).

II.3. Criminological perspective of development - reflecting to deviant behaviour

Sociologists and criminologists have always been interested in the roots of antisocial behaviour. Waves of growing criminality in the heavy laden decades of the past centuries resulted in a variety of theories about why people actually commit crimes, and responding to the discovered ‘risk’ factors what should be the relevant legal or social answers to the problem. For decades in the 20th century scientists used cross-sectional methods on teenage samples to empirically prove their theoretical ideas about the roots of offending. The theories of Shaw and McKay (see in Farrington & Welsh, 2007, p. 81) on juvenile delinquency in urban areas, of Cohen (1955) on delinquent boys of the working class or of Cloward and Ohlin (1960) on groups of juvenile delinquents provided sociological examination on the environmental and personal circumstances of those youngsters involved into criminal activity, whilst the works of Reckless, Diniz and Murray on the role of self-concept in delinquency, or Hirschi's (see in Laub, 2011, p. 384) theory on the causes of delinquency took the psychological experience of delinquent behaviour of the child into primary consideration. The common aspect in these studies was the exclusive use of cross-sectional method of

examination, which, as Laub (2011, p. 384) states, worked adequately when proving the above theories.

The significance of the developmental and life-course (DLC) approach in criminological theory has been emerging since the 1980's, when longitudinal research methodology became popular among criminologists. The roots of this approach date back to the research on criminal career and recidivism in 1950's. According to Borbíró, these research projects constitute the empirical basis for further studies on the role of age, criminal activity and the specific role of recidivists within the criminal population (Borbiró, 2011, p. 166). The DLC research projects of the developmental approach in criminology may focus on many specific questions (see Farrington, 2000). The most important task of the research is to unfold which life events or personal circumstances correlate with later offending, and what are those life events or personal circumstances that fulfil a protective role in terms of becoming involved into the life of crime. Thus, DLC criminality research focuses on *risk factors* and *protective factors* of crime, as well as those mechanisms, which support both factors whether in positive or negative context. Along longitudinal project on the individual characteristics and effects of harm caused in early years of development results of criminology and psychology complete one another, and researchers mutually benefit from each others' findings.

Those factors that predict an increased probability of later offending are called *risk factors* in DLC research (Farrington & Welsh, 2007). One of the already unfold area of risk factors of juvenile delinquency and deviance during the life-course is the insufficient interactions between family members, or the socio-economic status of the family (Farrington, 2003a). The risk in peer groups is also a well-established area of youth studies. The reasoning of criminal behaviour based biological characteristics is somewhat weaker in light of the fact that the process in which poor learning skills lead to antisocial behaviour are usually also characterized by certain additional risks mentioned above (Farrington, 2003a). It is also problematic to draw the boundary between normal and pathological, and between heath and illness (2003a, p. 2). Risk factors are not in linear relation with the delinquent consequences: the so-called *mediator and moderator mechanisms* explain this causality. These tend to re-direct the predictable paths, and prevent, mitigate or even aggravate the predicted negative consequences (Farrington & Welsh, 2007, p. 21).

Protective factors are those variables in DLC research that are believed to interact with risk factors to mitigate their effects (Farrington, 2003a, p. 11). In the most simplistic view protective factors are merely the opposite of risk factors (Farrington & Welsh, 2007), thus for instance low intelligence is known as an important risk factor, however people with high intelligence are less likely to commit criminal offences (Farrington, 2003a). When we apply analogy, we shall presume that if large family size counts as risk factor, a small family should be a protective factor, however research shows that both circumstances predict increased risk to delinquency (Farrington, 2003a). Thus, the idea according to which risk and protective factors are in linear relationship seems to be deniable. Magda Stouthamer-Loeber and her colleagues (1993) gave a different explanation to this relation. In their examination on protective and risk effect of different life circumstances they split the scale of the variables (e.g. from small family to big family) to three sections: the "negative level", "neutral" and "positive level". They did not look at the whole scale, but looked at the correlation only

between either the negative or the positive and delinquency. They found that 43% of the variables were significant on both the "protective" and the "risk" sides, while 28% was only significant on the risk, and 11% was significant on the protective side. This means, that in at least 41% of the variables there are in no linear correlation between protective and risk factors, and therefore only either the protective or the risk-aggravating nature is comparable with the neutral domain.

Table 7. Risk factors and protective factors

	RISK FACTORS	PROTECTIVE FACTORS
SOCIO-ECONOMIC SITUATION	• low family income/consistent poverty • parents long-term unemployed • poor housing • large family • single parent family	• firstborn child • relatively small family
NEIGHBOURHOOD AND COMMUNITY FACTORS:	• community disorganization and physical deterioration • high levels of mobility and lack of attachments to the community • majority of local authority or rented housing • high proportion of single parent families • higher than average percentage of young people • poor levels of service provision	
FAMILY BACKGROUND/ PARENTING	• poor parenting skills – erratic or harsh discipline • lack of parental control, supervision and monitoring • poor or disruptive attachments with child • parental conflict • family breakdown/family dysfunction • criminal, antisocial and/or alcoholic parent(s)	• large amount of attention from the caretakers
INDIVIDUAL FACTORS	• neurochemical factors and neurotransmitters • psychological factors • head injury • pregnancy and birth complications • low birth weight • FAS • hyperactive and impulsive • aggression • lower than average intelligence • mental and/or physical health problems • low self-esteem	• active and affectionate infancy • high intelligence
ACADEMIC AND SCHOOL FACTORS	• poor academic performance in primary school • disruptive and aggressive behaviour, including bullying • lack of concentration and motivation • poor attendance • lack of discipline and organization within the school • early school leaving	• focus on academic performance at school • clear and reinforced rules

Source: O'Mahony, 2009; Farrington, 2003a; Farrington, 2000, Farrington & Welsh, 2007

Family background and parenting styles appear to be the most important factors that determine later involvement into antisocial behaviour based on the results of DLC criminology. Transmission of offending over generations, wrong parenting skills, abuse and neglect of children and psychological and substance abuse problems of parents are well-known risk factors both in criminological and psychological research. Details of the negative patterns and consequences following from the above family-characteristics have been widely researched during the past decades. Research on child abuse and neglect, substance abuse and the types and impact of parenting styles have already been reviewed in the previous subchapter.

Family background is closely related to socio-economic situation (SES) that may determine parenting style through common cultural traditions and values. Low family income, continuous poverty, parents' long-term unemployed, poor housing, and large family in childhood indicates risk of later delinquency (Juby & Farrington, 2001; Farrington, Ttofi & Coid, 2009). Socioeconomic deprivation of parents usually predicts offending of children, while offending of parents is also a strong predictor. Surprisingly, based on the data of the Cambridge Study in Delinquent Development, the intensity of the father's criminal career does not predict the intensity of the child's career (Besemer & Farrington, 2012). Low SES predicts violence, mediated by poor parental skills and lack of anger-management skills (Patterson, 1989), which predicts delinquency.

According to the Pittsburg Youth Study, the character of *neighbourhoods* and characteristics of people living in given areas are also in connection (Farrington & Welsh, 2007, p. 88): six individual, family, peer and school factors have been divided into three levels of risk. Not surprising, that boys with high scores of risk tended to be delinquent regardless to the neighbourhood. However, according to this study those with the highest protective scores living in disadvantaged areas were more likely to commit crimes than those who lived in better neighbourhoods. Although this result shows that neighbourhoods influence behaviour in some extent, community patterns are strongly interrelated with family factors and SES.

Individual factors, such as biological and psychological characteristics and their impact on the personality and behaviour were described in the previous chapter. These factors are relatively stable over time and in different environments (Farrington & Welsh, 2007, p. 37). Criminological research shows that low intelligence is an important predictor of delinquency, while high IQ decreases the probability of adult convictions (Farrington & Welsh, 2007, p. 39-43). Certain dimensions of the personality also appear to be predictors of antisocial behaviour, such as restless and impulsive temperament in the early childhood that leads to aggression and self-reported offending in young adulthood (Farrington & Welsh, 2007, p. 47). Hyperactivity and other characteristics that imply a restless personality have been proved to be the important predictors of offending in multiple longitudinal studies (Farrington & Welsh, 2007, p. 49). The lack of empathy and other social skills, which would help in the understanding and interpreting the actions of other people correctly impair interpersonal relations and may lead to delinquency as well (Farrington & Welsh, 2007, p. 52-54)

Academic performance and school factors may also represent an important group of predictors. Academic performance is primarily but not exclusively dependent on the intelligence (IQ) level. Research shows, that school organisation, climate and practices make difference in academic performance and prevalence of delinquency. Clear, fair and consistently enforced rules and high academic focus in school, for instance, have preventive effect on misbehaviour. However it shall be noted that children with better performance and primarily prosocial behaviour tend to go to schools with low delinquency rates, while children with high level of antisocial behaviour tend to end up in schools with higher delinquency rates (Farrington & Welsh, 2007, p. 82-84).

Risk and protective factors do not only determine the probability of offending but also the dynamics of the antisocial behaviour through life. Onset, persistence and desistance from crime seem to be connected to a certain combination of risk-factors. Based on the data of the Cambridge Study in Delinquent Development, Piquero and his colleagues (2010) examined the set risk factors predicting short-term, high-rate offending as compared to those determining long-term, low-rate offending. For the purpose of risk assessment in the two groups, researchers measured the significance of 27 early childhood risk factors. They found that short-term high-rate offenders scored a higher rate both of individual and environmental risk factors than long-term low-rate offenders, thus the risk level seems to impact intensity and not the length of the criminal career. Farrington and his colleagues (2009) investigated the differences in risk factors in the lives of (a) late-onset offenders compared with non-offenders and (b) persistent offenders compared with adolescence-limited offenders. They found that that the following variables significantly predicted late-onset offenders compared with non-offenders: poor housing, large family size, a disrupted family, low nonverbal IQ, low verbal IQ, low junior school attainment, hyperactivity, and impulsiveness in childhood (8-10), early school leaving in adolescence (12-14), and high neuroticism, motoring convictions, and anti-establishment, attitudes in teenage years (16-18). Persistent offenders scored significantly worse than adolescence-limited offenders on only two childhood risk factors: harsh discipline and low popularity in childhood.

Based on the examination of risk and protective factors and typical patterns of offending, DLC research has concluded the most important characteristics of offending over life-span as follows (Farrington, 2003b):

- The prevalence of offending peaks in the late teenage years-between ages 15 and 19.
- The peak age of onset of offending is between 8 and 14, and the peak age of desistance from offending.
- An early age of onset predicts relatively long criminal career duration and the commission of relatively many offenses.
- There is marked continuity in offending and antisocial behaviour from childhood to the teenage years and to adulthood.
- A small fraction of the population (the "chronic" offenders) commits a large fraction of all crimes.
- Offending is versatile rather than specialized.
- The types of acts defined as offenses are elements of a larger syndrome of antisocial behaviour, including heavy drinking, reckless driving, sexual promiscuity, bullying

and truancy.

- Most offenses up to the late teenage years are committed with others, whereas most offenses from age 20 onwards are committed alone.
- The reasons given for offending up to the late teenage years are quite variable, including utilitarian ones (e.g, to obtain material goods (or for revenge), for excitement or enjoyment (or to relieve boredom), or because people get angry (in the case of violent crimes).
- Different types of offenses tend to be first committed at distinctively different ages.

However there are facts that we know from the research, theories tend to explain these facts differently. DLC studies implied a number of theoretical explanation in the past decades. In this subchapter only the most commonly referred works are going to be explained.

One of the most influential theories in this field of criminology is based on the research of Caspi and Moffitt (Caspi et al., 2002), who studied a large sample of boys from birth to adulthood to determine why some children who are victims of parental maltreated engage later in antisocial behaviour, whereas others do not. They based on previous research suggested that child maltreatment in early childhood appears to be an important risk factor according to the DLC research (Caspi et al., 2002). Researchers (see Subchapter 3.2) studied the level of the MAOA expression in the sample, and found that life-course antisocial behaviour of children who have and have not been victims of maltreating parents essentially differ from each other. According to the theory of Terrie E. Moffitt, which was based on the research findings, approximately 5-10% of the (male) population show life-course persistent offending (LCP), while in case of the rest of the population antisocial behaviour only appears at adolescence (adolescence-limited: AL). LCP originates in neuropsychological deficits, which are the consequences of prenatal deficiencies (mother's substance use, poor nutrition, etc.), perinatal maltreatment, as well as difficulties in the environment (such as poverty, lack of education on child-rearing, lack of social support). These circumstances cause further difficulties in self control, weaker cognitive abilities, stronger temperament, which prevent their participation in the 'normal' communities, and rolls their snowball of disadvantage further towards becoming a teenage mother, using drugs, etc. In contrary to these accumulated problems, deviance is to be seen as a normal part of becoming adult in the life of the ALs. Their behaviour is rather an antisocial reaction to what they consider conventional through their parental and school education. Their behaviour rather fulfils the function of demonstration of their dissatisfaction, and LCP friends usually provide a perfect opposition to the expected role models. Doing sports rather than studying, drinking, smoking, having sex are representing adult freedom, which may be attractive for ALs, but their psychological health prevents them from engaging themselves in longer criminal careers (Laub, 2011, p. 401). According to the researchers these categories are covering the whole underage population. The theory underpins the above mentioned fact, that early-onset leads to longer criminal careers, however late-onset predicts occasional delinquency or limited criminal career, and that the offenders with real problem behaviour come out as only a small proportion of the whole delinquent population. In their case antisocial behaviour indicates an "unsuccessful" socialization, which, apart from criminalization, leads to problems with women, violence in family, drug and alcohol problems, unsatisfactory employment,

abandoned children (Farrington, 1990). LCPs and ALs cover basically the whole population, although Moffitt suggests, that there is a third type of person, who, with regard to his personal characteristics (e.g. nervous and withdrawn personality or immaturity), will never commit criminal offences. It is also possible that someone does not commit offences because of the lack of opportunity in his environment (Farrington, 2003b).

Sampson and Laub interpret the above facts differently in their Social Bond Theory. The theory is based on their research project conducted at the Harward Law School after finding the old files of the longitudinal research of Eleanor and Sheldon Glueck in 1987. In their study the Gluecks conducted research on a sample of hundred male juvenile delinquents and five hundred non-delinquents in three waves (in ages 14, 24 and 32) from 1940 in Boston. This project provided with extensive data on life-course offending behaviour as well as personal information of the participants, such as IQ, race, income-level (Sampson & Laub, 2005). Based on the experiences of the dataset Sampson and Laub rethought and revised the social bond theory of Hirschi and explained their expanded theory on social bonds in the Crime in the Making (Laub, 2011). The Social Bond Theory inverts the assumption of Moffitt and states, that antisocial behaviour is the "the norm for all men and all crimes, including minor forms of deviance" (Sampson & Laub, 2005, p.13). This idea suggests, that life-course delinquency is not a result of failed socialization but rather the consequence of the lack of appropriate control mechanisms retaining from crime. Sampson and Laub agree with Hirschi in the necessity of control mechanisms. According to the original idea the social capital represents those resources, which are gained from a relationship with other persons, most typically from family relationships (monitoring direct control, while attachment is indirect control). If these are strong relationships, the social capital rises, and the person is going to be less likely to commit a crime because of realizing the opportunity of loss in his social relationship. While on the other hand, if these bonds are weak, the situation, which was described by Moffitt as "cumulative continuity", is leading the person towards deviancy (Laub, 2011). However, personal relationships appear to provide a too weak explanation on antisocial behaviour, with regard to the existence of further milestones in life (e.g. employment, settling down). Sampson and Laub think, that in addition to social control, differential association may account for person's desistance from offending. Accordingly, trajectories in crime are caused by rather the accumulation of individual and social circumstances than one particular problematic area of life, and childhood is not a developmental destiny: events of adult life, such as establishing a family with healthy attachments, may lead to desistance from antisocial behaviour. If, for instance a juvenile commits a crime for which he receives imprisonment sentence, the term spent in prison support weakening his social bonds (thus family relationships, education status, etc.) which leads to enlonged period of offending. However, if the punishment focuses on strengthening social bonds, it may prevent reoffending. Thus, Sampson and Laub assume, that structural turning points in life (e.g. marriage or birth of a child) are the most important in supporting changes of a person's life, because they create new social bonds (Laub, 2011; Sampson & Laub, 2005). The assumption of rational choices makes the delinquent child's will also important part of this process: the human agency concept builds upon the idea, that people are also making their own decisions in the situation of becoming an offender. Based on this presumption, Sampson and Laub do not validate division of people into life-course and

adolescence-limited offenders because they believe that changes are only dependent on the value of social bonds. In this sense life-course offending may be explained by mean of an interconnected chain of disadvantages through life-span (Sampson & Laub, 2005).

The Integrated Cognitive Antisocial Potential (ICAP) Theory of Farrington (2003b) is an attempt to formulate a wide-ranging integrated DLC theory of offending via combining particular elements of other theories (Laub, 2011). In the *Cambridge Study on Delinquent Boys* Farrington has previously studied risk factors of criminality over the life-course, and he was working on investigating casual mechanisms of offending, rather than on a theoretical scheme. He was encouraged by Joan McCord to work out his ideas on DLC that happened finally in 1992 (Farrington, 2003b). His theory integrates strain theory, control theory, theories, labelling theory and rational choice approaches. The key construct of the theory is antisocial potential (AP) which refers to the potential to commit antisocial act. AP is converted to actual criminal activity via thinking and individual decision-making, which takes account of opportunities and consequences (Farrington, 2003b). AP may be understood as a potential to long term, persisting offending and short term involvement into offending. The accumulation of impulsiveness, strain, modelling, socialization and life events characterize long term AP, while short term AP depends on motivating and situational factors. Based on the accumulation of rather positive or rather negative factors, the whole population can be distributed on a scale from low potential to high potential of long-term AP. People who have high AP represent a relatively small proportion of the whole population. Implicitly, those people who are in high risk of long-term AP are more likely to become involved into antisocial acts, including offending, while low-risk individuals are unlikely to get involved into crime. Factors, that determine long-term AP, namely mainly between-individual factors, tend to be consistent over time according to Farrington (2003b), thus abusive family background and its consequences influence the individual, although this does not necessarily mean that a child will not be able to join a peer group that is rather supportive and non-violent. The latter would have a lowering effect on long-term AP, and therefore change long-term AP from rather high to rather low. Typically however, socialisation within the family determines peer relationships as well, and therefore children with low attachment to their parents or caregivers will experience impaired peer relations as well. Life events, such as getting married, getting a child or separation from a long-term partner may also influence long-term AP. Different factors may mediate or moderate each others' effect either to the negative or positive direction of the scale.

This description of individual risk that depends on various 'within-individual' and 'between-individual' factors is very similar to the above mentioned theories of Patterson, Sampson and Laub or Moffitt, who actually refer to the same processes when talking about inhibiting bonds, building attachments, and factors determining onset, persistence and desistance of crime. The uniqueness of the theory of Farrington shows in the fact that he connects these individual characteristics (risk) to the situational effects. He believes that whether a person commits and actual crime or not, depends not only on his AP, but also those situational factors representing costs and benefits of offending in a particular situation. The person evaluates in a cognitive process e.g. the price of the stolen item, the likelihood of being caught by the police, the possible disapproval (or approval) of family or friends. According to Farrington (2003b), people with low level of AP are not going to take the lowest risk, even

though objectively it may seem a rational decision, except if they are influenced by short term AP factors (such as being drunk and therefore less inhibited).

The cognitive process that is influenced by situational factors may change significantly with regard to the institutionalised (e.g. receiving legal sanctions) or social (e.g. disapproval of partner) reaction to offending. An effective reaction may lower long-term AP as well, however, depending on the quality or individual perception of the reaction it may even increase it. Regarding to the actual effects of social or legal reaction to desistance, Farrington argued, that this area is not properly covered by longitudinal research yet, and therefore more research shall be done on this subject in the future (2003b).

II.4. Risk and response

As a result of the above introduced DLC research, criminologists gained extensive knowledge about the roots of antisocial and criminal behaviour. The risk factors, protective factors, mediator and moderator circumstances which were revealed by scientific research provide information about the typical age, socio-economic background or potential criminal career of a youth offender. Data is collected on individual level, as its purpose is to find typical patterns in the lives of offender and non-offender individuals, as for instance that early age onset predicts a relatively long criminal career (see under II.3). In this respect it is important to notice, that based on purely the results of the research it is not possible to establish the causality between these life-events: it does not tell if the length of the criminal career lies on the early involvement into crime itself, or early onset in crime is already a result of disadvantageous circumstances that remain unsolved along the criminal career until desistance. Criminological theory has an important role in explaining these processes and in leading policy-makers and professionals towards certain mechanisms of prevention and response. Some theorists remain at the psychological explanations, and perceive "risk factors" as signals of social disadvantage, which contribute to the development of an antisocial personality which eventually leads to criminal behaviour. Others believe that the results of DLC research provide evidence on the lack of appropriate control mechanisms within the individual as well as the environment.

There is no scientific consensus on the roots of understanding on "risk" in the contemporary justice systems, although it seems to be clear that these roots are to be found in the movements of the society (Kemshall, 2003). According to Beck (1992), the concept of "risk" is created by the late modern societies as opposed to the "traditional dangers". In his view "risk may be defined as a systematic way of dealing with hazards and insecurities induced and introduced by modernization itself" (Beck, 1992, p. 21). As opposed to the older dangers the new concept of risks is related to the threatening force of modernization and to its globalization of doubt. The threat of "risks" in general lies in their incalculability or potentially irreversible consequences. Concerning these new threats science has also lost its "monopoly on rationality", giving space to political views and interests, which "fill in" the gaps that are created by incalculability, insecurity and fear. Other theorists claim, that the understanding of contemporary policy-makers on "risk" is the result of the calculative capitalistic attitude of the 17th century that aimed to count the profit and loss even in social movements, or the result of the loss of control over the globalised dangers around us, which

lead to increased interest in counting the probability of the occurrence of future dangers, and responding to them appropriately (Kemshall, 2003, p. 8-13).

The responsibility for dealing with risks is the task of governmental leaders rather than scientists; therefore its nature is political rather than scientific. Scientific explanations on risk go only as far as the establishment of the probability of the occurrence of certain events. When Farrington states, that early age onset will probably lead to a longer criminal career, his statement does not inform us about *why* this happens and *how we should prevent* that these children engage in a criminality. As mentioned above, theoretical reflections provide explanations to the question why, but there remain gaps between scientific and social rationality regarding to the appropriate response (Beck, 1992, p. 30). At the same time there is increased political need to provide appropriate methods to the assessment and management of risk.

The structures of risk assessment and management in justice reflect to the methods and results of the scientific analysis. First, they are organised to deal with risk on the level of the individual. Institutions assigned to fulfil this role within the justice system assess the risk investigating the individual circumstances, and provide training programmes and treatment, which deal with the offender, aiming to improve *his* skills and change *his* attitudes. Kemshall (2003) notes that the individualisation leads to the translation of traditional inequalities of the society to modern risks, and puts all social and individual disadvantages in the perspective of individual failure and individual responsibility. Second, this perception of risk does not solely belong to crime management but to the management of incivilities and so-called "pre-criminal" or "antisocial" behaviour as well. Social policies aim to eliminate risk of crime with the same methods as it is done within the justice system, and begin to control individuals' behaviour as a response to the potential consequences in longer term. The majority of incivilities are responded by the police in most of the European countries, which means that these structures are represented by the same authority as in the criminal justice. Third, these systems are often considerably formalised and standardised, which leads to the supersession of professional judgement and autonomy (Kemshall, 2003, pp. 11-12). Garland (2001, p. 175) claims, that discussion about the control of the offenders is directed to a more and more abstract, and unrealistically stereotypical character, leading to standardisation in the justice response. Despite the individualised assessment there is lack of consideration of personal circumstances, because the risk factors are only used to assess and classify the offender not to establish a needs-based plan of reintegration of a person.

The latter aspect of certain measures is even more painful in case of juvenile justice, since the traditional feature and distinguishing element of the concept has always been focus on the offender rather than the crime itself, and the goal of (re)socialisation and education based on individual needs. In contrary to the traditional aim of *social integration*, where the offender has been treated and trained to accept and follow the norms of the society where he was eventually brought back, the new feature of *system integration* installs mechanisms that control everyday life. The main tasks are the co-ordination of the systems and situations on the way that they can decrease the opportunities crime and avoid security weaknesses and criminological hot spots (Garland, 2001, p. 182). While controlling the most serious offenders and ensuring the safety of the communities remains the task of closed institutions, the probation service occupied a key position in the process of individualised assessment,

classification of offenders, supervising the fulfilment of intervention-programmes aiming to change behaviour and provide new skills to less serious offenders (Kemshall, 2003, p. 16). Justice institutions assigned to respond to risk are supported by the institutions of social and health services, the aim of which is to eliminate risk at its very roots by intervening to the life of to families with young children, to schools and neighbourhoods in disadvantaged communities and to antisocial youth.

The limits of the territory of "risk" in the contemporary justice systems and more importantly the limits of risk management strategies provide continuous debates among policy-makers who tend claim the increasing need for safety and defenders of human rights who claim that individuals shall not pay the price of the attempt of preventing something that cannot really be prevented. The strain between the need for control and the rights of human beings is also touchable in the international documents of children's rights, which attempt to put a clear line between the acceptable and unacceptable levels of control. Chapter III will examine the approach of international instruments on a juvenile justice system that corresponds with children's rights, while in Chapter VI and Chapter VII I will point out how certain institutions and policies perceive "risk" in the analysed juvenile justice systems. In the followings I will provide an introduction to the programmes and methodologies that are developed to eliminate risk of crime in disadvantaged communities as well as among youth offenders.

II.4.1. (Early) intervention as an instrument to eliminate criminal risk

Developmental researchers tend to support the idea, that early intervention can prevent persistent criminal behaviour. It is often argued in support of early prevention, that these strategies are relatively cheap and simple to implement with regard to the already existing child protective and social institutions, and they are effective in long term. Taking these into consideration, prevention of maltreatment of children and early intervention became an important area of evidence-based criminological research that aims to improve child protective and social services to provide appropriate treatment to families and children in the early stage of childhood. A vast number of projects provide intensive intervention, primarily in the most disadvantaged communities, working on the promotion of better parenting in order to create a healthier environment to children and to prevent the emergence of deviant behaviour, and among others, delinquency.

Borbíró (2011, p. 177) notes that research on early intervention often links up with the actual intervention projects, because research projects validate their theoretical assumptions based on comparing a group who received intervention with a control group that did not participate in the project. Programmes may be categorised, e.g. according to the target group (specific age group, vulnerable groups, population-level), the communities where the project is implemented (neighbourhood, family, school), the tools of the intervention (psychological treatment, behavioural training, education). According to Brandon Welsh (2012, p. 395) "delinquency-prevention involves intervening in the lives of children and youths before they engage in delinquency in the first place", and it "involves measures that are largely of a developmental or social nature – preventing the development of criminal potential in individuals and improving the social conditions and institutions (e.g., families, peers, social

norms) that influence offending". In contrary to this, he perceives institutional responses to actual registered delinquency as "control" and "repression", which characterize the juvenile justice process. However, he does not exclude the possibility of applying "prevention" programmes in the justice system: prevention programs that aim to address the needs of older juveniles necessarily involve justice personnel as well. These ideas on prevention reflect perfectly to scientific results on child development and risk factors. Life of children is understood as a path of growth that may contain several risk factors as well as protective factors. Depending on how early one recognizes the risks, the relevant actors of the social or justice systems should have appropriate answers to the problems. The programmes for children and families in disadvantaged areas serve similar goals like prison rehabilitation projects, only the latter is an intervention that reacts on a different developmental stage of the child and certainly a different developmental stage of the problem itself. Naturally, the earlier intervention is expected to prevent the snowball effect in the accumulation of risk factors, and primarily the experience of derailment of one's life. The benefits of the early reaction do not only show in lover crime rates, but in financial savings as well, since the costs of early interventions are significantly lower than the cost of dealing with delinquency. Therefore Welsh (2012, p. 396) advises to invest into targeted, evidence-based intervention instead of using punitive measures against juvenile delinquents.

Preventive strategies focus on the risk factors discovered, for instance, in the studies mentioned above, and design methodologies that aim to mitigate or eliminate these. Welsh (2012) reviewed evidence-based methodologies according to their target groups. He distinguished (1) individual prevention, (2) family prevention and (3) peer, school and community prevention:

1. Individual prevention strategies target risk factors within the individual. According to Welsh two types of individual-based programmes are proven to be effective in preventing delinquency: preschool intellectual enrichment and child skills training. *Preschool intellectual enrichment* target intelligence and attainment through stimulating and cognitive-based enriching experiences that parents cannot provide for (typically disadvantaged) children. One famous example to this type of preventive projects is the Perry Preschool project, that targeted disadvantaged African American children of 3 and 4 years and offered daily preschool program backed up with daily home visits. Follow-up studies of this project show, that the intervention had long-term effects on the life-circumstances of the participants (such as graduating from high school, employment, annual incomes) as well as criminal records. *Child skills trainings* target interpersonal or social skills of children to improve control of their impulsivity, empathy and self-centredness. Later delinquency rate of those who participated in these programmes was in average 10% lower than in the control group.
2. The idea of family prevention is based on the findings of a number of psychological and criminological research projects, according to which poor or violent child-rearing, poor supervision and inconsistency are associated with later delinquency. Family-based programmes that are proven to be effective in preventing delinquency may be delivered by nurses (parent education) and psychologists (parent management training). *Parent education* refers to the home visiting beginning at birth or sometimes already during pregnancy. Visits aim to educate parents to non-violent and non-

harmful child-rearing practices, to promote healthy development and sometimes to improve parental wellbeing as well. As a result of these programmes physical abuse and neglect of children decreased. *Parent management training* provides with tools to parents of children with behavioural problems. The trainings are usually held in parent groups and teach consistent child-rearing. According to the meta-analysis of Welsh, this type of intervention produces 20% reduction in antisocial behaviour and delinquency.

3. Peer, school and community prevention target the environmental risks in children's lives. *Peer-based programmes* target especially children's strategy of choosing friends, namely to give preference to pro-social instead of delinquent friends. These programmes use pro-social peers trained to teach younger peers how to resist peer pressure. *School-based programmes* cover those non-situational methods that aim to bring forth a disciplined climate through fostering self-control and social competences. *Community-based programmes* intervene locally, and aim to "change the social conditions and institutions that influence offending in residential communities" (Welsh, 2012, p. 407). The definition covers after-school programmes or mentoring. After-school programmes provide the opportunity to children to spend their free time with activities other than offending, such as doing sports or preparing homework with the help of tutors. Although scientists have controversial observations on the effectiveness of these programmes, the positive peer relations experienced during these activities and drawing the intention of children to drug-free live are definitely favourable results. The other type of community-based intervention, mentoring, refers to those projects where an adult volunteer spends time with the young person, acting as role model. Research shows that these projects are more effective with the length of the period that mentor and mentee spend together.

Regarding the application of methodologies in support of crime prevention I find the dilemma of Jeremy Coid (2003) on the extent of effects of social, economic and environmental circumstances on crime control worth to mention at this point. He distinguishes high risk strategies and population strategies, which are, although equally important but, designed to target different problems. While population strategies aim to reach changes via the distribution of population values, high-risk strategies provide support to a very specific group of the society in order to help in closing up to the average of the society. The latter strategies cover usually relatively temporary projects, that may be relatively expensive, but their cost-effectiveness is easier to analyse than that of population strategies because they have visible effects within a foreseeable time period. Therefore they are more conceptualised by the general public and politics. Population strategies in contrary are designed to achieve their positive effects on the whole population more slowly and moderately. Since they cover the whole population, they have to concern high-risk individuals both on basic and superficial levels and the services provided have to be able to support social change and answer widespread problems. If the population strategy is successful, children of the whole population enjoy lower risk than before, thus the whole distribution of exposure levels is lowered. In case of high-risk strategies risks within a particular community, family, school, or within the individuals targeted by the project are mitigated or eliminated. These strategies, as we have seen in the above categorisation of Welsh, usually target only one, or a small amount

of risk factors. There are some high-risk strategies, as for instance the Multi-systemic therapy (see in Chapter IV.1. under point 9) , which try to intervene in order to eliminate multiple risk factors at the same time, but these relatively rare, and still cannot cover all risk factors within a community.

As I have already explained earlier, the phenomena that we see as the risk of well-being of a child in child protective sense are often risks of later offending in criminological terms. Efforts taken by both psychologists and criminologist in this respect, and the overlapping area of research show clearly that criminal behaviour is not an independently developing behavioural pattern, but it connects basically every other disadvantageous aspect of life. Programmes focusing on development in early childhood and education on parenting, whether they are called crime preventive or child protective programmes, both aim to reach the same goal, namely providing with better life-expectations to children. This includes the lack of psychological and behavioural problems all over their life-span, but also the prevention of deviant behaviour and delinquency.

The idea of increasing financial sources for the early intervention programmes and services is widely supported among the researchers. According to the Nobel Prize winner economist, James Heckman, and his colleagues (García et al, 2016) early intervention projects are beneficial investments for the society in multiple aspects. In one of their latest research projects they used the data of ABC and CARE programmes[4] to estimate costs and benefits of an early education programme, in comparison with no intervention and child care alternatives. They looked at parental income, education, criminality, labour income, and general health conditions, evaluating these as outcomes of the early intervention programmes. According to their conclusion girls show more beneficial treatment effects than boys in general, but pooling males and females the benefit is still 7.3 dollars for every dollar spent on the intervention (García et al, 2016, p. 54). They also concluded, that the no single outcome has driven the efficiency, thus benefits of early intervention programmes shall be understood as life-cycle benefits (García et al, 2016, p. 61). In terms of the crime preventive goals it means that such programmes do not only prevent criminality in the later stages of life, but they tend to prevent a whole range of social disadvantages. David Farrington compared the benefits of early intervention in contrary to benefits of incarceration as follows: a 50% increase in incarceration in 15 years would produce a 5-15% decrease in crime, while if the same amount of money was invested in early prevention programmes for high-risk groups, there would be a 7-26% decrease in crime (Farrington, 2013). According to Farrington by participating offering a preschool project the state earns back the investment in threefold, from the MTFC and MST projects the state may benefit 4-5 times the investment, and from Functional Family Therapy about tenfold of the investment will be spared on various kinds of public expenditures. The Perry Preschool Project is an often mentioned example to successful early intervention projects in the United States. This programme was also evaluated by Heckman. More than 20 years after the intervention researchers concluded that “for every $1 spent on the program, $7

[4] Data on cognitive and socio-emotional skills, education and family-economic circumstances were collected from the birth of the child, and after the the programme in ages 8, 12, 15, 21, and, with the exception of data on cognitive aspect, 30. The researchers had access to criminal records, and they collected medical surveys in the mid 30’s as well.

were saved in the long run", refering to the costs saved not only in health care services but also in the justice system (Farrington & Welsh, 2003).

Most of the prevention strategies are focusing on the primary and secondary stage of the crime problem (Van Dijk & Van Waard, 1991). They aim to prevent criminality by means of awareness raising and child protection services. Table 8 summarises the most important activities within this scale. The so-called tertiary level of crime prevention it is not the part of delinquency prevention but its control.

Table 8. Preventive projects according to the two-dimensional understanding of crime prevention

	DEVELOPMENTAL STAGE OF THE (CRIME) PROBLEM		
	primary	**secondary**	**tertiary**
individual (as potential offender)	Programmes to provide general information: • campaigns about drug or alcohol use Programmes aiming to improve parenting practices: • helplines • home nursing • available child protective support	Programmes to stop domestic violence • aggression training • therapy Youth clubs Intensive social work	Programmes to avoid harms of imprisonment: • Rehabilitation • Intensive probation supervision • monitored house arrest • etc. Training Employment programmes
situation	Supporting the improvement living conditions of families 1. reduced tax rates 2. free primary and secondary education 3. available health services	Investing into the improvement of living conditions of families in risk, as e.g. living in poverty and/or highly disadvantaged situation • state benefits	Identifying hot spot zones e.g. of casinos, porn shops, brothels
victim	Information campaigns on • family violence • violent practices in child-rearing and abolishing corporal punishment Bullying programmes in schools	Legislation that promotes effective prevention of family violence Systematic response to bullying	State compensation Victim assistance Specialised help, such as • shelter homes • rape crisis centre

Source: Van Dijk & Van Waard, 1991

The target groups of both the primary and secondary stages are the family and the peer relations, since these factors play the most important role in determining the later life-span of a person (see earlier in this Chapter). The programmes aim to strengthen the position of the child from three perspectives:

1. They aim to strengthen the position of the child, through supporting the fulfilment of his basic needs (individual level).
2. They aim to support the living conditions of the family and access to health services.

3. They aim to eliminate the risk of becoming victim of maltreatment and peer aggression.

Programmes on the primary stage intend to reach the general public, while the target groups of the secondary stage are those families who already live in disadvantageous areas or districts, who have experienced and learned failing parental practices, and who are suffering from health problems or disabilities and therefore require increased support in preventing maltreatment.

II.4.2. Tertiary prevention in juvenile justice and beyond

As the message of the Stockholm Criminology Prize Winner (2013) David Farrington suggests, it is "never too early, and never too late" to intervene to children's lives in order to encourage them to desist already at the early stage of their criminal careers and change their perspectives in life. Prevention on the tertiary level refers to the prevention of recidivism among ex-offenders, and aims to support their return to the society (Van Dijk & Van Waard, 1991). The definition involves classical justice methods (such as probation and supervision), medical treatment (such as psychological treatment or the treatment of drug users) and relatively modern innovations (such as house arrest, mediation, training courses, and community service). Preventive programmes targeting ex-offenders may take place in the community or in institutional settings.

As mentioned earlier, developmental approach perceives a person's life as continuously changing path, determined by external and internal factors. Crime in this regard is perceived as the consequence of aggregated disadvantageous factors. These factors are not different from the factors that the non-delinquent population experiences: the child who commits robbery might be victim of physical abuse and so does the child who is robbed. Although their position in front of the juvenile court differs, since they are offender and victim of a crime in a particular case, it is only the result of their behaviour in a certain point of time. The circumstances that lead to offending and victimisation can be very similar, therefore they require similar treatment. This approach leads to overlapping in project methodologies in particular on the secondary (youth at risk of engaging in deviant behaviour) and tertiary levels (juveniles in conflict with the law who already committed crime) of intervention. Programmes that are based on developmental results may reflect to the same risk factors on the tertiary level of crime prevention like those programmes used on secondary level. Greenwood (2008) notes, that even among juvenile offenders, programmes that emphasize better relations within the family are the most successful. The following programmes are examples to those interventions that may be used for both delinquent and non-delinquent population:

1. *Multidimensional Treatment Foster Care (MTFC):* participants in this program received training on their individual skills and family therapy (Farrington & Welsh, 2003; DCI NL, 2015).
2. *Multi-systemic Therapy*: This method aims to treat children with complex behavioural problems. The therapy targets multiple areas of life, therefore intervention takes place in the family, in the community, in school, or as individual training, based on the needs of the participant. In the Netherlands this therapy is an accepted alternative

measure in juvenile justice, where recidivism among participants declined by 10.5% according to the Justice Policy Institute (Farrington & Welsh, 200; DCI NL, 2015, p. 18).

3. *Functional Family Therapy*: It targets children with various deviancies, and aims to improve the interactions and emotional connections between family members. In the Netherlands recidivism occurred by 15.9% less in the intervention group (Farrington & Welsh, 2003; DCI NL, 2015).
4. *Intensive Protective Supervision*: The target group is the non-serious offenders. Children and their parents are closely monitored and regularly counselled on the progress of their individualised service plan. Children who participate in these programmes are less likely to appear in front of juvenile court within one year after the end of the probation period than those juveniles who are assigned to regular protective supervision (Greenwood, 2008).

These programmes, and many others, are often implemented as condition during the probation period. They are often proven to be successful in terms of recidivism rate among participants as compared to the recidivism rates among those who were subject to classical methods, pure surveillance or scared straight approach (Greenwood, 2008).

Although the opportunities may be restricted following from deprivation of liberty, programmes that aim to build social skill and reach cognitive changes are also implemented in institutional facilities for juveniles. In different institutions there are different opportunities for the implementation of a programme, that depend on the usual length of sentences or measures juveniles spend in the institution, the flexibility of the regime (open, closed or semi-open), physical conditions of the institution and the relationship between the staff and the inmates, etc. According to Greenwood (2008) there are three generalised program strategies: the first is focusing on the dynamic and changeable risk factors, the second is reflecting to children's individual needs through using evidence-based practices, and the third is targeting specifically high-risk youth. These strategies have limited opportunities to deal with the most important risk factors, those within the family, in the institution, however it is also possible to apply family counselling in certain jurisdictions. Programmes focusing on individual needs are reported to be successful (Greenwood, 2008). Behaviour management trainings, interpersonal skills trainings, group counselling, and individual counselling provide positive examples to within-institution treatments.

The advantage of these programmes does not only affect the juvenile's recidivism rates or their further pathways, but it may also positively influence the climate at the working environment and the everyday-problems of the staff as well. In closed facilities staff and inmates have to deal with an extremely regulated, hierarchical environment, where actors have to share a relatively small space. This is a stressful situation which naturally triggers conflicts and aggression both between peers and peers and staff. If a programme can successfully reduce the tension, it changes the climate within institutional units and may even motivate the staff to further improve their practices and approach towards juveniles.

An example for this approach is the Dutch YOUTURN Programme Methodology that combines trainings that aim to develop competencies and learning skills to fulfil different tasks (Social Competency Model) and developing moral awareness and responsible behaviour (EQUIP) (Hendriksen-Favier, Place, & Van Wezep, Summary, 2010). The programme has

been implemented in 2008 in all juvenile detention centers in the country. In this regard this project represents the national strategy on the re-socialisation of a relatively problematic group of juvenile offenders. The first evaluation in 2010 concluded that the implementation of the programme has not been completed fully in the institutions, and with regard to the low integrity and differences in the implementation stage it is difficult to measure the real effectiveness of the programme. According to the report of the WODC the implementation of the EQUIP methodology reached higher level than the other elements (Hendriksen-Favier, Place, & Van Wezep, Summary, 2010). Institutions had to face obstacles, in particular in the parental participation component, such as poor accessibility of the family, and language and cultural barriers.

II.5. Critics on developmental studies and resoponse to risk

Developmental research constitutes an important area of both psychology and criminology. It observes life events and deduces the probability of involvement to offending as a consequence of one risk factor, or a set of risk factors along life-span, and building on this knowledge they aim to find the best way to prevent involvement to deviant behaviour. Their importance lies primarily in the fact that they translate empirical phenomena to numbers, and with the help of these they are able underpin the everyday observations on the cycle of disadvantage. With this, researchers are able to underpin their theories and present their conclusions in a simplistic manner that is easily understandable to policy makers and the general population as well. However, what is an advantage on the one hand, that is a disadvantage and danger on the other hand. Simplified results that lack theoretical grounding and explanation may be subject to misinterpretation and may lead to repressive policies targeting specific groups of the society or specific behaviour that was concluded to be dangerous based on pure data. However, disregarding the social reality, thus personal conditions and cultural values that evocate and foster the deprived situation, can also lead to counterproductive policies. Accordingly, we might know that negligent or abusive parenting leads to behavioural problems in childhood, but these results do not tell anything about the right manner of preventing bad parenting. One might argue that parents should be forced by law to participate in parenting education whenever their child-rearing methods are proven to be failing, and in case of objection or non-compliance criminal measures should be applied. However, this strategy would highly disregard the interest of the child in living in family, that is most preferably motivated seek help to solve child-rearing problems, and remain free from additional risk factors of criminality.

The simplifying nature of contemporary criminology, and in particularly research based purely on statistical result, has been criticised by Jock Young in his work *"The Criminological Imagination"*. According to Young (2011, p. 55-61) modern sociology and criminology that deal with deviant behaviour and crime have lost their imaginative nature and sensitivity to what is personal, and they rely primarily on the results of research methods that translate human behaviour to numbers. Phenomena in the society are measured by arbitrary methodologies that include groups of people who are considered as uniform population, and exclude those from the sample who could not produce the required quality of data. Measurement and marking phenomena, as determinants of positive or negative outcomes

become more technical questions determined by financial opportunities, instead of the matter of broad cultural understanding. Several methodological problems are listed by Kerezsi and Kó (2013, pp. 46-57). These are related primarily to the designation of the sample (the relation between the frame population and the target population, method of selection), the loss in the sample over time, the refusal of answering certain question, and the length of the survey-period.

Critics of Jock Young on the contemporary 'crime science', and within this, longitudinal studies, that created two criminologies summarise clearly the doubts about splitting research and reality regarding crime and deviance:

> "There are two criminologies: one "grants meaning to crime and deviance, one that takes it away; one which uses an optic which envisages the wide spectrum of human experience: the crime and law- abiding, the deviant and the supposedly normal – the whole round of human life, the other lens that can only focus on the negative, the predatory, the supposedly pathological; one which encompasses a world of creativity and is an agent of *verstehen*, one which is fixated on the scientific and the nomothetic; one whose vista is emotion: it is a criminology of excitement, anxiety, panic, repression and frequently boredom, another whose actors are miserable creatures of rational choise and determinacy, either passionless foreground or a mechanistic background; one that is the voice of those below and the investigator of the powerful, the other which echoes the white noise of the criminal justice system; one which seeks reclaim criminology for sociology, the other which sets up a 'crime science' divorced from the great modernist tradition of Marx, Weber, Durkheim and Simmel. One is the criminologist of the imagination; the other frowns on such exuberance and resolutely proclaims the mundane nature of the everyday world" (Young, 2011, p. 180).

Ethical doubts can also be raised against the experimental methodologies of evidence-based studies, as for instance the ethical confirmation of non-intervention in the control-group (Kerezsi & Ko, 2013, p. 44), and in case of those individuals who were excluded from the research with regard to their specific conditions or characteristics (e.g. programmes targeting girls often exclude boys from girl-empowerment projects). Coid (2003) also warns to the stigmatisation effect of high-risk strategies that target one particular group of the society with crime-preventive intervention and as a result of this label the member of this group directly as potential criminals. According to Borbíró (2011, p. 189-201) the policies built upon the results of longitudinal research, and accordingly the actual implementation of intervention often disregards structural, cultural and moral explanations on criminality, and avoid the classical critical approach, which refuses to accept idea that the society may be divided to "offenders" and "non-offenders". She points out, that statistical rationality turns down any other aspect in thinking about criminality, such as its definition and source, and therefore results of these studies are highly dependent on the researchers' subjective idea on "criminality" and "antisocial behaviour". In light of the lack of sensitiveness to structural, cultural and moral factors, purely statistical results of DLC research may lead to exaggregated and generalised conclusions. According to Borbíró these conclusions provide perfect input to

policy makers who seek easily understandable, simple concepts on causality between social processes and criminality. This leads to generalised responsibilisation of vulnerable groups of the society, and targeted policies that aim to eliminate risks, regardless to the complexity of the problem.

Clinical trials are not only labelling and ethically questionable in criminology, but also in developmental psychology. In the Bucharest Early Intervention Study Zeanah and his colleagues (2012) implemented "the first ever randomized controlled trial of foster care as an alternative to institutional care for young abandoned children", which, as mentioned before, delivered important results about brain development and recovery in foster care. However, some ethical issues had been by the researchers (Zeanah et al., 2012): first, that American scientists conducted research in Romania, choosing a vulnerable group of subject that enjoys lower level of protection than a similar group in the United States. This, as according to explanation of the researchers, was necessary, because children in alternative care are rarely placed in large institutions in the U.S. with regard to the welfare policy that requires family-based child-rearing, or whenever it is not possible, family-like settings. Therefore the subject-group of this study was simply not available in the home country of the researchers. In contrary to this, Romania is one of those Eastern-European countries that evolved huge institutions at the time of socialism, and de-institutionalisation of alternative care is still an important issue in social policies[5]. However, since the researchers do not provide any further explanation on the nature of partnership with the implementing NGO, this information still does not explain how are the potential participants among the child population protected from the arbitrary practices in the name of science. Second, the target group of the study were abandoned children of a very young age. Their protection was guaranteed in two steps: the methodology of the study was affirmed by a Research Board in the U.S., and Romanian caregivers were always free to decide that the child should not be subject of certain test if he or she obviously objected. Third, according to the researchers, the purpose of the study could be questioned in the United States where family(-like) care is decided to be preferable, however this was not true to Romania, where the issue sought political support at the time. Fourth, and most importantly, the fact that at least half of the children cannot benefit from the expected advantages of the project is also problematic. When explaining this ethical issue, the researchers turned the approach around, and referred to the fact that no child had been put into a more disadvantageous situation that she or he was before, moreover, half of the children got clinically proven better care and better chances. Also, the study did not influence decisions about placement in the newly built foster care or in biological family. They miss to tell in this regard, that 51 children from the "original sample" were excluded from the study for medical reasons, such as genetic syndromes and frank signs of fetal alcohol syndrome (Nelson et al., 2007). And finally, that the sustainability of the project should be supported by local authorities and governmental bodies, resulting in the long term advantage for children in alternative settings. The researchers made sure, that both NGO's and the local authorities supported the sustainability and development of the foster care in Bucharest.

[5] See for instance: Opening Doors for Europe's Children Campaign, that aims to draw the attention of policy makers in Eastern Europe to the damages of institutional care, and those legislative and social opportunities, such as foster care, that provide with positive changes in the lives of children. Retrieved from http://www.openingdoors.eu/where-the-campaign-operates/romania/ (8/11/2015)

The results of the study may put pressure on governments to invest into early intervention and children, and therefore more and more children in Romania and abroad are going to receive a better care. However, it will not give back the chance to those Romanian children who participated in achieving these amazing results, and remained in institutional care as 'control group' for the purpose of the study. The price they paid is detailed in the papers that prove that children who live in institutional settings receive less attention, experience poor attachments, and develop slower than children placed to foster care.

In light of the controversies between the results of and critics on the methodologies and approach of developmental studies, it is difficult to draw clear conclusions on the supportable nature of these studies. On the one hand, it is unquestionable, that their results added a lot to contemporary criminology and our view on the juvenile justice systems. On the other hand, they may result in political misinterpretation and drastic interventions that exclude and include persons arbitrarily – claiming that research purposes override any other rationality. In conclusion, it is clear, that scientific results in this field have to be escorted by a clear universal and child-centred approach. Children's rights declared by the United Nations and the Council of Europe aim to interpret these results in favour of the child regarding every situation of life. Their conclusions on the most preferable policies draw careful consequences from the research and require the same from their States Parties. The children's rights' perspective on children's deviances prescribes the elementary postulates and limits of state intervention into children's lives, and concludes a global framework on how appropriate and effective methodologies shall be implemented and applied.

In this Chapter the developmental perspective in psychological and criminological theory and research had been introduced, and a summary of the most important findings and approaches of both fields was presented. Observations of developmental research and processes explained by theoretical works point out, that (1) the contemporary understanding on deviant behaviour and delinquency perceives these phenomena as outcomes of a long process influenced by various factors over the life-span, rather than a pathological phenomenon compared to normal social behaviour; (2) these factors are in close relationship with life events and living circumstances, the rather poor or negative nature of which implies social disadvantage and delinquency (risk factors), while a set of rather positive factors implies social advantage and high prevalence of non-delinquency (protective factors); (3) through replacing risk factors by protective factors in childhood, expectations on life-quality regarding the social position of a person and the probability of (later) involvement in delinquent acts, become better; (4) therefore, policies and programmes that aim to prevent delinquency through focusing on the improvement of certain areas of the life of the child, e.g. changing risk factors to protective factors are effective in preventing delinquency and adult criminality. Research did not only prove that certain programmes decrease the prevalence of deviant behaviour and delinquency, but also the reinstating effect of positive changes in the environment that may even help to recover from biological harm (Nelson et al., 2007).

Developmental researchers tend to support the idea, that early intervention can prevent persistent criminal behaviour. It is often argued in support of prevention, that these strategies are relatively cheap and simple to implement with regard to the already existing child protective and social institutions, and they are effective in long term. Taking these into

consideration, prevention of maltreatment of children and early intervention became an important area of criminological research that aims to improve child protective and social services to provide appropriate treatment to families and children in the early stage of childhood. A vast number of evidence-based projects provide intensive intervention, primarily in the most disadvantaged communities, promoting better parenting that creates a healthier environment to children and prevents the emergence of deviant behaviour, and among others, delinquency. In the following Chapter I will provide an overview of international documents on children's rights and analyse the key issues of juvenile justice, paying special attention to the reflections to child development and evidence-based intervention in international law.

CHAPTER III

CHILDREN'S RIGHTS REQUIREMENTS IN JUVENILE JUSTICE

In the previous Chapter the developmental perspective in psychological and criminological theory and research has been introduced, and a summary of the most important findings and approaches of both fields was presented. The present Chapter aims to introduce the international regulation on controlling youth criminality including its reflections to the results of developmental research.

The importance of international rules on the institutional control of youth criminality lies in their extensive nature that requires one country to provide the same quality of guarantees to a child in conflict with the law like the others. Although the idea that children all over the world are entitled to be provided with the same chances in life and therefore the same quality of support from states are so widely accepted, that with the exception of the United States all countries of the world have ratified the UNCRC, the implementation is still far from completion.[6] The level of the fulfilment of rules regarding controlling child criminality depends mainly on opportunities of the governments that are limited by a number of difficulties following from the given political, economic and cultural situation of the country. These limitations imply that juvenile justice systems, if they have been established yet, differ significantly in their purpose and approach towards children (e.g. they perceive children as rational actors or as being determined by external circumstances), actual legal rules (e.g. having a juvenile justice system embedded in their criminal justice systems, or their welfare system is appointed to deal with juvenile delinquents) and applicable measures (e.g. if they support deterrent practices or they are more welfare-oriented) used in particular institutions.

As a result of the children's rights movement of the past decades, the new concept of ideal child-rearing and its ideal support transformed the build-up and co-operative strategies of protective institutions and organisations. According to Muncie (2008), the following developments of the respective policies have happened as a result of the children's right movements: (1) introduction of child protection laws; (2) acknowledgment of problems of child trafficking, sexual exploitation and the recruitment ofchildren for armed conflict; (3) introduction of measures to give children a voice such as through school councils or youth parliaments; (4) introduction of legal representation in juvenile court and attempts to divert

[6] In 2015 the last but one country ratified the UNCRC. With this ratification the only country that did not accept this document as part of its source of law is the USA. Despite this wide approval a number of countries missed to implement the Convention into their national legal systems, and therefore its application in practice is inefficient and selective. Others apply reservations to be able to rightfully keep their traditions that contradict the Convention, or simply disregard their international obligations. Resource: http://www.un.org/apps/news/story.asp?NewsID=52129#.V1LGLSE8xKo

from court through mediation and restoration. Regarding to the institutional developments, Abramson (2006) lists the following developments: (1) coalition building, (2) changing attitudes, (3) establishment of new governmental structures, (4) participation of young people, (4) consideration of developmental needs, (5) legal reforms, (6) investing into children.

In the present Chapter I will introduce the system of international documents dealing with children's rights in the institutional system entitled to control delinquency in European countries. When introducing these regulatory systems, I will highlight the reflections to developmental results, and the influence of these in particular international regulatory levels. This question relates to the perceived importance of scientific results and their potential role in implementing international laws into the institutions that control youth criminality. After this, I will explain the definition of "juvenile justice" in international context to discover those systematic characteristics that distinguish juvenile institutions from either child protection or the adult justice system. Finally, I will present an analysis on the state implementation of children's rights requirements to the administration of juvenile justice in Europe. The analysis is based on the concluding observations' of the Committee on the Rights of the Child in light of the analytical structure of General Comment No. 10 on juvenile justice.

III.1. International regulation on controlling youth criminality

It is a difficult task to create an international document on children's rights, and even more difficult to specify its requirements towards the administration of juvenile justice in all countries of the world. First, a large variety of legal regulations and institutional build-ups exist that look at children and their crimes differently. They do not only use different institutions, but also describe and understand phenomena or given behaviour differently. With regard to this, definitions and requirements shall be formulated as general as possible. Second, cultural traditions and political trends of certain region shall not dominate the newly established universal standards on children's rights. The requirements shall ensure the States Parties' freedom to maintain their own values, and integrate the universal standards into the legislation and practice of certain areas. Because it has to apply to all states, the international regulation on children's rights cannot contain too concrete provisions or in depth requirements. The purpose in this level is to highlight the universal importance to pay attention to children's needs and determine the main principles and a relatively broad framework for the implementation. The development of more detailed principles and actual action-plans is the task of regional treaties (e.g. African or European documents) which can reflect directly to local problems, and fight local obstacles. European children's rights in juvenile justice are regulated on multiple levels:

(1) rules adopted by the UN, which are in force in the vast majority of the countries of the world;

(2) rules on continental or regional level, such as the regulation addressed to the Member States of the Council of Europe;

(3) inter-state, bilateral or federal rules, which are only forcing a relatively small group of countries.

In this system of rights the UN level of regulation fulfils the role of setting general basic standards. The Council of Europe (CoE) accepts these standards and specifies them as much as possible, while it reflects to the characteristics of the current regulation within its Member States. Although the European Union (EU) have been created to establish the European market of goods and encourage transnational trade and business, EU regulations on social matters are also more and more open to implement children's rights requirements into their strategies.

International documents differ in their binding force as well. While treaties are binding the States Parties, and therefore they are usually less specific, non-binding documents provide the opportunity to the international bodies to lay down 'guiding documents' on specific issues without blaming the resistant States Parties. Jaap Doek (2008) categorised international documents based on their binding force as follows:

- *'International rights'* are specific provisions, which can be found in international treaties and in particular the UNCRC, and which entitle the child to certain protection and services. Countries usually are allowed to make reservations on particular requirement to which they do not want to adapt;
- *'International standards'* are internationally agreed-upon principles and/or rules for enhancing a minimum level of quality of the various activities in the administration of juvenile justice;
- *'International guidelines'* contain recommendations for the states to undertake specific actions, and usually aim to develop the minimum level of quality of actions.

III.1.1. UN regulation on controlling youth criminality

The most significant document on children's rights is the United Nations' Convention on the Rights of the Child (UNCRC). As mentioned in the introduction of this Chapter the Convention had been ratified by almost all states of the world, which suggests an almost universal consensus about the importance of warranting the rights of the future generations. According to Josine Junger-Tas (2006) the importance of the UN rules lies in the *values* it represents and its moral appeal to realize these values in practice. Fundamental values of the Convention can be described best through basic rights and principles: (1) non-discrimination, (2) best interests of the child, (3) right to life, survival and development (4) the right to be heard (Doek, 2008 and 2009).

The UNCRC contains specific Articles focusing on juvenile justice matters. There are the following:

- *Article 37 of the CRC* on the prohibition of torture and cruel and inhuman treatment of children, as well as unlawful deprivation of liberty;
- *Article 39 of the CRC* on the requirement of support in psychological recovery and social reintegration in case of victimization of children;
- *Article 40* of the CRC on the special requirements on penal law and penal procedures, such as the right to be heard, the primacy of diverting solutions and non-judicial interventions in case of minor delinquency.

Besides these Articles a number of provisions apply directly or indirectly to the juvenile justice system. As for instance, being aware of the general principles in the juvenile justice system has high importance in a situation of increased vulnerability, and especially in case of placement in closed facilities. Furthermore, children in conflict with the law are also entitled to maintain the relationship with their families (Article 9), to express their views and to be heard (Article 12 and 13), to exercise their religion (Article 14), to be protected from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19), or to live in a healthy environment and receive appropriate treatment in case of illness (Article 24). Therefore, the Convention shall not be understood as a list of independent provision, but as a set of interconnected requirements. The required holistic view suggests that all relevant provisions shall be regarded in every situation (Abramson, 2006). For example, states have to ensure that a child is deprived in his liberty is "treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age" (Article 37 c)). How the actual appropriate treatment shall look like apart from being age-sensitive, is established in the Convention. A child deprived in his liberty is entitled to all those rights other children enjoy, such as the right to healthy environment or education. The Convention highlights the importance of a placement separated from adult offenders and the right to maintain family-bonds in line with other international instruments (Article 37 c)).

The International Covenant on Civil and Political Rights (ICCPR) does not expressly focus on juvenile justice issues, but it contains important rules on fair trial and deprivation of liberty of 'juveniles'. Article 6 states that children below the age of 18 shall not be subject of death sentence. Article 10 requires the separation of children from adults in detention and children who are convicted for crime from children who are placed to closed facilities with regard to any other reason. Finally, according to Article 14 States Parties are required to take into account the age of the juvenile person in a procedure and they shall promote the rehabilitation of offenders.

To complement the treaty-level documents the United Nations General Assembly has adopted important standards and guidelines on specific problem-areas of juvenile justice:

- Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules');
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules');
- United Nations Guidelines for the Prevention of Juvenile Delinquency ('Rijadh Guidelines') and
- United Nations Standard Minimum Rules for Non-custodial Measures ('Tokyo Rules') which is not only applicable in case of adults, but also for juveniles.

These documents complete the framework of prevention, case management and rehabilitation of children (Pinheiro, 2006, p. 179). Interpretation of these documents should always happen in line with the rules of the UNCRC and other United Nations' documents. They focus on the prevention of juvenile delinquency in all three levels, and promote strategies which reflect to the research on the development of children.

The implementation of the UNCRC is monitored by the Committee on the Rights of the Child. The Committee on the Rights of the Child, that consists of 18 experts, is entitled to

monitor the progress of the implementation of children's rights all over the world, and make recommendation on the strategies concerned, based on the reports of States Parties (Art. 43 and 45 of UNCRC). Principally, States Parties have to report in every five year to the Committee (Art. 44 of UNCRC). Concluding observations of the Committee summarise progress and concerns of the expert body about particular legal rules and institutions, and suggest different solutions that fit to the requirements of the UNCRC and other UN standards and guidelines. The Committee does not only monitor particular countries, but provides guidelines to the UNCRC with detailed requirements on specific areas. Among these some are directly relevant to youth criminality, such as General Comment No. 7 on implementing child rights in early childhood, General Comment No. 10 on children's rights in juvenile justice and the General Comment No. 12 on the right of the child to be heard.

General Comment No. 10 of the Committee on juvenile justice is one of the most important sources of the detailed requirements in the control of child criminality. This document is important not only because it highlights those areas in the regulation of juvenile justice that require reformation in the majority of the States Parties, but also because it provides information to the states on those approaches, policies and practices that are supported by the Committee. Therefore, however this document has no binding power whatsoever, it is the most important source for those countries which take children's rights seriously, and intend to reform their juvenile justice systems accordingly.

Although the UN Guidelines for the Alternative Care of Children expressly exclude the application of the document for "persons under the age of 18 years who are deprived of their liberty by decision of a judicial or administrative authority as a result of being alleged as, accused of or recognized as having infringed the law" (A/RES/64/142, point 30 a)), this document is still important to mention here. When looking at the practice of European countries in dealing with youth criminality it is not an unusual strategy that justice authorities divert or formally place delinquent children in child protective residential care. The placement in such institutions may be underpinned by the inappropriate family background in combination with specific behavioural (among others delinquency) or psychological problems or substance abuse of the child. In order to prevent that children run away from care institutions and suffer repeated victimisation closed units or institutions are also available in most of the European countries. The decision about the placement is tyipically made by administrative bodies or the (civil) court on child protective grouds, however the result of the legal act is deprivation of liberty in factilities which are often similar to juvenile reformatories or detention (see e.g. in the Netherlands, Hungary, Finland, England). This phenomenon shows that vulnerability of a child and delinquency of juvenile offenders are strongly related, not only according to the research but also as they are perceived by the relevant authorities. In light of the practice it remains a question how the requirements on the determination of appropriate formal response, quarantees of the procedure and the outcomes shall be brought in balance within juvenile justice and child protection. The Guidelines, and especially the approach that promotes family- and community-based care instead of residential treatment, could provide with important perspectives to the institutions of juvenile justice on the preferable developments of this system.

Table 9. United Nations' documents relevant to the institutional system dealing with youth criminality

ORG	TYPE	YEAR	TITLE	ACRONYM
UN[7]	Treaty	1966	**International Covenant on Civil and Political Rights** *Adopted by the General Assembly of the United Nations on 19 December 1966*	ICCPR
UN	Standards	1985	**Standard Minimum Rules for the Administration of Juvenile Justice** *Adopted by the General Assembly of the United Nations on 29 November 1985*	Beijing Rules
UN	Treaty	1989	**Convention on the Rights of the Child** *Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989*	UNCRC
UN	CRC Comments	2002	GENERAL COMMENT No. 2,The role of independent national human rights institutions in the promotion and protection of the rights of the child	
UN	CRC Comments	2003	GENERAL COMMENT No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)	
UN	CRC Comments	2005	GENERAL COMMENT No. 7, Implementing child rights in early childhood	
UN	CRC Comments	2007	GENERAL COMMENT No. 10, Children's rights in Juvenile Justice	
UN	CRC Comments	2009	GENERAL COMMENT No. 12, The right of the child to be heard	
	CRC Comments	2013	GENERAL COMMENT No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*	
UN	Guidelines	1990	**United Nations Rules for the Protection of Juveniles Deprived of their Liberty** Adopted by General Assembly resolution 45/113 of 14 December 1990	Havana Rules
UN	Guidelines	1990	**United Nations Guidelines for the Prevention of Juvenile Delinquency** Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990	Riyadh Guidelines
UN	Standards	1990	**United Nations Standard Minimum Rules for Non-custodial Measures** Adopted and proclaimed by General Assembly resolution 45/110 of 14 December 1990	Tokyo Rules
UN	Guidelines	2010	**Guidelines for the Alternative Care of Children** Resolution adopted by the General Assembly resolution 64/142 of 24 February 2010	

Significant changes have been reached during the past more than 25 years in the field of warranting children's rights thanks to the UNCRC. Professionals and non-professionals became aware of a number of obstacles in the course of childhood that prevent healthy development, among which phenomena that shall not be tolerated, discrimination and injustice receive more attention both in formal and informal stages of the society. Thanks to the increasing awareness national and international programmes have been developed to support the better implementation of the UNCRC. However, as some researchers note, the power to support the implementation of children's rights is very limited. According to

[7] United Nations

Abramson (2006), "the problem is that the UNCRC is persuasive but breach attracts no formal sanction. It may be the most ratified of all international human rights instruments but it is also the most violated. In most cases it has not been incorporated into the domestic statutes of those ratifying it". As Abramson concludes pessimistically, the UNCRC has been received in many states as "unwanted". As important evidences to the rejection of children's rights may be mentioned the still widely applied disproportionate sentences, the insufficient respect for the rule of law, the excessive use of custody and the fact certain social problems are tackled through juvenile justice instead of the social system (Muncie, 2008). Although these are indeed serious and unfortunate phenomena that shall be eliminated, their existence does not diminish the achievements of the UNCRC. We have to accept, that it will probably take generations, until the document reaches the stage of at least close to full implementation. As Herczog (2009, p. XXXI) points it out, changes happen in course of a constantly developing process that, just like the development of children, builds on our patience, effort, attention, and cooperation. As a result of this process children's rights slowly become part of the way we think about the present and the future, and step beyond of the exclusive consideration of how we create our laws and practices including children.

III.1.2. Regulation of the Council of Europe on controlling youth criminality

The most important document of not only the juvenile justice matters, but also the human rights in Europe is the European Convention on Human Rights and Fundamental Freedoms (ECHR), which was adopted by the Council of Europe (CoE) in 1950. According to the preamble of the EHCR, it intends to put forward the goals of the Council of Europe, namely "the achievement of greater unity between its members" and recognizes the maintenance and further realisation of Human Rights and Fundamental Freedoms as one of the methods by which the aim is to be pursued. The EHCR, and its Protocols by which it had been completed in the course of the past more than sixty years contain mainly universally applicable provisions regarding human rights and freedoms. Although there is lack of specific attention to children, a number of Articles contain provisions that are directly applicable in juvenile justice, such as the prohibition of torture (Artricle 3), the right to liberty and security, where the purpose of education of minors deprived in their liberty is highlighted (Article 5d)), right to a fair trial (Article 6), or the prohibition of discrimination (Article 14).

The appropriate implementation of the EHCR is supervised by the European Court of Human Rights (ECtHR). The goal of the Court is "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols" (Article 19). In practice the ECtHR deals with individual cases, which have reached the highest level of court in the Member States, however the national judicial forum did not establish violation of human rights and freedoms. The decisions of the ECtHR have the force of precedent, through which they can guide the Member States towards a more appropriate implementation of the ECHR.

The other important sources of Council of Europe are the Recommendations of the Committee of Ministers. The Committee of Ministers is the statutory decision-making organ of the CoE (Article 13 of the Statute of the Council of Europe). It may conclude conventions and other documents initiated within the body, or on the initiative of the Consultative

Assembly. Based on Article 15 b) of the Statute of the Council of Europe the Committee of Ministers may as well publish its conclusions in the form of recommendations to the governments of the Member States. The Committee may even request the governments to provide information about the actions taken by them with regard to such recommendations.Regarding to the requirements on juvenile justice the Committee of Ministers published a number of recommendations (see Table 10). All of these documents refer expressly to the UNCRC or other UN documents that contain regulation on juvenile justice, supporting the idea, that CoE takes the responsibility for putting forward the implementation of children's rights on the regional level. I would like to shortly introduce some of these to give insight to the way of thinking that these documents represent.

- *Recommendation(87)20* on social reactions to juvenile delinquency. Although this Recommendation has later been replaced by Rec (2003)20, it is still important to mention, that it was created to establish a number of basic principles regarding juvenile justice, that are still perceived as guiding principles. One of these is that CoE have recognized that young people are developing beings and therefore in need of education instead of repressive punishment. Furthermore, the Committee of Ministers recommended that Member States guarantee the same procedural rights to children as to adults, and that they apply preferably community-based sanctions.
- *Recommendation (2000)20* on the role of early psychosocial intervention in the prevention of criminality perceives juvenile criminality as a result of deficiencies in the course of the development in childhood. The recommendation aims to prevent delinquency through intervention targeting the situation where a child is at risk of becoming persistent offender. The recommendation acknowledges prevention of criminality as "an essential part of an effective crime control strategy". Within the framework of this document risk factors refer to "individual characteristics or socio-economic, cultural, demographic and other circumstances, which increase the likelihood of engaging in future persistent criminal behaviour", while protective factors cover basically the same scale of factors that prevent this engagement. "Prevention of criminality" means all measures and activities which aim to reduce the likelihood of engaging in future persistent criminal behaviour, while prevention of crime refers to the efforts taken to reduce the number and seriousness of criminal offences (Appendix, I. Definitions). Programmes that target risk factors should follow the principles of effectiveness, minimum intervention, proportionality (to the risk), non-stigmatisation and non-discrimination, and they require the cooperation of a variety of social, health care and education professionals. It is important to highlight, that the Committee of Ministers recommend that these interventions are organised on a voluntary or contractual basis.
- *Recommendation (2003)20* concerning new ways of dealing with juvenile delinquency and the role of juvenile justice summarizes the aims of juvenile justice, namely (1) to prevent offending and re-offending; (2) to resocialize and reintegrate offenders and (3) to address the needs and interests of victims. This Recommendation aims to replace Rec (87) 20, with regard to the following developments: (1) the Council of Europe expanded significantly after the political transitions of the 1990; (2) the newest results of research on juvenile delinquency and the effectiveness of intervention-methods; (3) changes in typical social circumstances in certain periods of life. According to the recommendation

the principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be (1) to prevent offending and re-offending; (2) to (re)socialise and (re)integrate offenders; and (2) to address the needs and interests of victims. In order to achieve better in reaching these goals new strategies should emerge that target special groups of juvenile delinquents (serious, violent, and persistent offenders), and focus on the offence as well as the needs of the juveniles. Risk-assessment should be done with professional tools, and measures shall be applied only if they appear to be proportionate to the level of risk of reoffending. There is attention paid to the involvement of parents into the strategy on (re)socialisation and education of the child, and taking the responsibility for his actions. The recommendations repeat the requirements of the UNCRC on the application of deprivation of liberty as last resort and the shortest appropriate term, and set absolute maximum limit to pre-trial detention (6 months). Finally, the recommendations pay attention to the proper dissemination of results in this field as well: according to Rule 25, "to counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet."

- *Recommendation (2008)11* on the European Rules for juvenile offenders subject to sanctions or measures is the last recommendation of the Committee of Ministers so far that deals expressly with juvenile justice. It aims to "uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty". Accordingly, its rules repeat, re-structure and detail the existing regulation, but do not introduce a new approach within the framework of CoE recommendations. Part I of the recommendations presents definitions and the basic principles that are already known from previous recommendations of the CoE. Part II deals with the community sanctions detailing the requirements on the legal regulation, the implementation as well as non-compliance of the child. Part III of the document deals with deprivation of liberty, including placement to institutions within and outside of the justice system. Regarding to deprivation of liberty, from the requirement on placement to the appropriate clothing, hygiene, and nutrition, every part of the sanction or measure is detailed by the rules. Further Parts the document contain rules on legal advice and assistance (Part IV), complaints procedures, inspection and monitoring (Part V), staff (Part VI), evaluation, research, work with the media and the public (Part VII), and updating the Rules (Part VIII). The relevance of these rules lies in the unusually detailed manner they are presented. It definitely narrows down the space of national legislation (assuming that state members are willing to implement it), and intends to prevent applying interventions that are non-compliant with children's rights.

The recommendations do not have binding force to the member states' legislations. Lévay (2005) argues, that despite the fact that these documents do not become part of the national legislation, they provide clear framework and explanation on the requirements towards a juvenile justice system, therefore they may even be used as guidance for a comprehensive conversion of juvenile justice.

Table 10. List of relevant documents of the Council of Europe

ORG	TYPE	YEAR	NAME
CoE [8]	Treaty	1950	**Convention for the Protection of Human Rights and Fundamental Freedoms** Adopted by the Council of Europe, 4/11/1950, Rome
CoE	Treaty	1961 (1996)	**European Social Charter** Adopted by the Council of Europe, 18/10/1961, Turin
CoE	Treaty	1965	**European Code of Social Security** Adopted by the Council of Europe, 16/4/1964, Strasbourg
CoE	Treaty	1980	**European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children** Adopted by the Council of Europe in Luxembourg, the 20th day of May 1980
CoE	Treaty	1987	**European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** Adopted by the Council of Europe,
CoE	Treaty	1996	European Convention on the Exercise of Children's Rights Adopted by the Council of Europe, 25/1/1996, Strasbourg
CoE	Treaty	2011	**Council of Europe Convention on preventing and combating violence against women and domestic violence** Adopted by the Council of Europe, 11/5/2011, Istambul
CoE	Recommendation, CM	1987	**Rec (87)20**on social reactions to juvenile delinquency
CoE	Recommendation, CM	1988	**Rec (88)6**on social reactions to juvenile delinquency among young people from migrant families
CoE	Recommendation, CM	1998	**Rec (98)7**concerning the ethical and organisational aspects of health care in prison
CoE	Recommendation, CM	2000	**Rec (2000)20**on the role of early psychosocial intervention in the prevention of criminality
CoE	Recommendation, CM	2001	**Rec (2001)12**on the adaptation of health care services to the demand for health care and health care services of people in marginal situations
CoE	Recommendation, CM	2003	**Rec (2003)20** concerning new ways of dealing with juvenile delinquency and the role of juvenile justice
CoE	Recommendation, CM	2005	**Rec (2005)5**on the rights of children living in residential institutions
CoE	Recommendation, CM	2006	**Rec(2006)19** on policy to support positive parenting
CoE	Recommendation, CM	2008	**Rec (2008)11** on the European Rules for juvenile offenders subject to sanctions or measures
CoE	Recommendation, CM	2009	**Rec (2009)10** on integrated national strategies for the protection of children from violence
CoE	Recommendation, CM	2011	**Rec (2011)12** on children's rights and social services friendly to children and families
CoE	Recommendation	2004	**Rec 1666 (2004)** on a Europe-wide ban on corporal punishment of Children
CoE	Recommendation	2008	**Rec 241 (2008)** on the child in the city

[8]Council of Europe

CoE	Guidelines	2010	**Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice** Adopted by the Committee of Ministers on 17 November 2010
CoE	Strategy	2011	**Council of Europe Strategy for the Rights of the Child (2012-2015)** CM(2011)171 final 15 February 2012

III.1.3 Steps to promote children's rights in the European Union

Although implementation of human rights in justice is not listed among the basic goals of the European Union, slow steps have been taken in the past years in order to promote them during law making as well as in the operation of the justice system. Based on the *European Charter of Fundamental Rights* (ECFR) the human rights of children shall be guaranteed in EU institutions as well as by Member States. According to Article 24 of the ECFR "1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concernthem in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, thechild's best interests must be a primary consideration. "Within the frameworks of the Charter and the UNCRC the Commission of the European Union is engaged to promote children's rights within the Community.[9] In 2006 the Commission published a *Communication towards an EU strategy on the rights of the child*. This document is expressing the engagement of the European Union to provide support in the implementation of children's rights based on the UNCRC. In 2010 the Commission adopted a *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union,* which requires that legislative proposals are always in compliance with fundamental rights, including the rights of the child. *The Stockholm programme* of 2010 of the European Council listed children's rights among priorities in promoting human rights and recognized the need for developing "an ambitious Union strategy on the rights of the child" (par. 2.3.2). Remarkable steps have been taken by the European Union towards warranting rights of the most vulnerable children: in 2011 the Council published its *Conclusions on early childhood education and care*, while in 2013 a Recommendation on *'Investing in children: breaking the cycle of disadvantage*' that was adopted by the European Commission in 2013. Although these documents are strictly focusing on those social circumstances, which shall be improved to provide with opportunities for children in the society, these are the same factors that come into consideration as risk factors of juvenile delinquency as well.

The most important document that deals with children's rights in justice within the European Union is the Opinion of the European Economic and Social Committee (ECOSOC) on the prevention of juvenile delinquency (2006/C 110/13). The Opinion highlights the need for a common European strategy on preventing juvenile delinquency (1.2), although it admits that there are a number of difficulties that one have to deal with when trying to design Europe-wide policies (1.3). The variety of definitions on juvenile delinquency, the different

[9] Source: http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm

models of the juvenile justice system, the possibility of the transition to the adult justice, and the different age limits have been observed as important obstacles. The ECOSOC examined the causes and the extent of juvenile delinquency including new trends, and observed the followings:

- All the EU Member States are witnessing roughly similar social transformations, such as growing poverty, exclusion and extent substance abuse, which also require comparable responses.
- Although international instruments shaped the juvenile justice systems similarly, there are still significant differences between Member States' juvenile justice systems, such as the age of juvenile criminal responsibility.
- Similar socio-economic and political circumstances between the Member States, legal traditions, which are sometimes very close would justify the need for social policies impinging upon youth crime prevention.

The ECOSOC highlights, that the common strategy shall not be restricted to the judicial sphere, but it seeks to be interdisciplinary and multi-institutional, "bringing together other branches of knowledge — such as the social and behavioural sciences — and widely varying institutions, authorities and organisations (national, regional and local administrations, different kinds of social services, police and court structures, non-profit organisations, private companies working through corporate social responsibility projects, family associations, economic and social players, etc.), who often operate in an uncoordinated manner" (7.1.4.1). In order to reach this goal, ECOSOC proposed to the Commission:

- to collect up-to-date and comparable statistical data that provide reliable picture on the problem;
- to provide a series of minimum standards or guidelines between Member States covering all aspects from the way the police and courts deal with young people to the re-education and resocialisation;
- to organise surveys, expert networks, publish green papers and share knowledge on the different situations and experiences in each of the Member in order to be able to create the minimum standards; and
- to establish a European observatory on juvenile justice.

Within this area the ECOSOC notes „any advances made in the field of juvenile justice in the EU would boost the status of this area of knowledge and encourage the development of specialist research in European universities, which must be brought into the entire process" (7.4).

According to the *Summary of the contextual overview on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union* (2014) published by the European Commission, the nineteen per cent of the population in the EU is under the age of 18. Based on the estimation, 25.3 million children are old enough to reach the minimum age of criminal responsibility of the country where they live, and thus, be a potential subject of the local juvenile justice system. The summary aims to take the first step towards the implementation of the collection of reliable and comparative data as well as evidence-base policy-making as according to the Commission Communication on *'An EU Agenda for the Rights of the Child'* (2011). According to the Communication, "gaps in

knowledge about the situation and needs of the most vulnerable groups of children should be addressed as a matter of priority. In this context, there is also a need for more information on methods to prevent crimes against children". Therefore, the Commission engaged in co-operation with relavant organisations and institutions to produce basic data and information to guide decision-making. The reports provide information about the national legislations, regulations, measures and policies as of 1 June 2012. Although the reports do not live up to scientific standards and some, such as the Hungarian report (Császár, 2013), contain misinterpretations that may bias the understanding as well as the comparative result, they represent a first step towards mutual understanding in the field of juvenile justice. With regard to the questionable reliability of data I will not analyse further the material and the conclusions of these studies. Despite the mistakes in the content, this comparative effort is certainly an important step towards a European database on juvenile justice that may help to unfold children's rights issues of juvenile justice within the Union.

In March 2016 a new directive was adopted by the Parliament of the European Union and the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter "Directive"). As the motivation for the new Directive the preamble of the directive notes that „(3) Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States." With regard to the here mentioned inconsistencies in the practice of Member States the Directive aims to support the implementation of the international rules, and in particular the Guidelines of the Council of Europe on child-friendly justice (Preamble, Par.(7)). According to Article 3 'children' are all persons under the age of 18.

The Directive provides requirements addressing the national legislations as well as legal practice. As for an example it requires that Member States take efforts to apply deprivation of liberty of children as a measure of last resort and for the shortest appropriate period of time, "given the possible risks for their physical, mental and social development, and because deprivation of liberty could lead to difficulties as regardstheir reintegration into society (Preamble, Par. (45); Article 10). Therefore national authorities are urged to implement practical guidelines or other arrangemens, and based on Article 11 they are required to provide alternatives to detention, which shall be applied by the competent authorities. Programmes can include prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or participation in therapeutic or addiction programmes (Preamble, Par. (46)). The implementation of the Directive will be evaluated after 6 years by the Commission who shall submit her report to the European Parliement (Article 25).

III.2. Definition of juvenile justice

The European models of controlling youth criminality follow different routes from putting the responsibility in the hands of the criminal justice, to diverting the entire problem of juvenile delinquency to the welfare system. How far these systems do or can respond to the real problems that will be analysed further, after establishing the definition on how we should understand juvenile justice in the thesis. Establishing a definition that refers to comparable systems is difficult with regard to variegation in the solutions mentioned by the ECOSOC in its Opinion on the prevention of juvenile delinquency. Taking a closer look at the problem would reveal that in reality we actually talk about the quality of relationship between child protection (welfare) and criminal justice institutions and measures, including the compatibility of certain measures in a given system. The compatibility depends on the basic idea about the child's need and the structure of public laws. In the developmental context delinquency is always a symptom of an earlier of current harm or other negative factor that remained untreated from childhood to adolescence. In order to be able to identify the sources and apply appropriate reaction based on them, both child protection and juvenile justice professionals have to be aware of the processes detailed in the previous Chapter. This idea creates interlocking duties in this field, what makes juvenile justice, as Abramson (2006, p. 23) argues, "not a system, but an overlapping of systems". As a result of this it becomes difficult to define what *should be* the tasks of one and the other in order to reach rational balance and co-operation on the institutional level. The degree in which states accept the developmental idea or refuse to deal with children as being *at risk* rather than subjects that *represent risk*, determines the quality of the relationship, and thus the set of reactions. Apart from the ideological approach legal traditions determine the final face of the juvenile justice system as well. For example it might be a generally accepted idea in a country, that the control of juvenile delinquents is organised the best in the community and without stigmatising the child, if the justice system itself is not flexible enough to arrange formal diversion effectively. This may lead to informal solutions, which place the child into the child protection system without a justice procedure. As a result of this procedure the actual control-role is placed to child protection, while juvenile justice deals only with the most difficult youngsters. In another system flexibility would lead to creating space for a number of alternatives within the juvenile justice without having to apply informal strategies.

Legislators of international regulation are also struggling with the establishment of an appropriate, not too broad and neither too narrow definition of juvenile justice. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") set the first international standards specifically on juvenile justice. However, they did not define 'juvenile justice system' expressly, only through limiting the applicability of the Rules to the national legislation, compatibly with their respective legal systems and concepts (Rule 2.2). On the one hand, the Beijing Rules require, that 'juveniles', who are children or young people under the respective legal system, are dealt with in a different manner from adults, when they have committed an offence (Rule 2.2.a)). Offence according to the Rules is "any behaviour (act or omission) that is punishable by law under the respective legal systems" (Rule 2.2.b)). These respective laws shall be applied to juvenile offenders impartially, without

distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status (Rule 2.1). On the other hand the Rules invited States Parties to the yet Children's Rights Declaration to establish, in each national jurisdiction, a set of laws, rules and provisions that are specifically applicable to juvenile offenders and institutions and bodies the purpose of which is the administration of juvenile justice (Rule 2.3). This has to meet the needs of juvenile offenders in a manner that protects their rights (2.3 a)). Thus, based on the Beijing Rules, a *juvenile justice system is a set of (legal) institutions and bodies that aim to organise formal response to juvenile delinquency in a way that it meets the specific needs of offenders below the respective age of criminal responsibility and with regard to the specific needs, treats them differently from adults.* The Beijing Rules give no further guideline on whether these laws, rules and provisions shall be implemented into the justice system that deals with offenders of crimes, the welfare system, that is supposed to provide support in serving the needs of children, or maybe in an institutional setting apart from both of these.

The definition of juvenile justice has not been clarified by the UNCRC either. Although it addressed very specific requirements to juvenile justice systems all over the world, it did not undertake defining it, and neither did the other UN standards and guidelines that supplement the UNCRC. With regard to the large variety of juvenile justice systems in the world, these documents approach the respective systems from the viewpoint of policy instead: they list those comprehensive requirements that a State Party have to fulfil in order to correspond to the rules and spirit of the UNCRC. These requirements cover classical justice institutions as well as institutions of secondary prevention. General Comment No. 10 of the Committee on the Rights of the Child, recommends regarding to the organisation of the strictly taken juvenile justice that States establish juvenile courts, but appoint at least juvenile judges who deal with juvenile cases (point 93), however it highlights the importance of specialised services, "such as probation, counselling or supervision, [that] should be established together with specialized facilities including for example day treatment centres and" (point 94). According to the General Comment the same quality of services should be provided to child offenders in facilities for residential care and treatment, which implies the extended understanding on juvenile justice system. The most important element of organising comprehensive institutions is creating specialised units and teams within the justice system and beyond that are trained and prepared to effectively respond to the needs of the juvenile while respecting his or human rights (see General Comment No. 10, point 92).

The Recommendations Rec(2003)20 of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice provide the following definition of 'juvenile justice system': *"The formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support"* (I. Definitions). According to this definition, juvenile justice is restricted to those state institutions, which play classical role in the investigation about, and jurisdiction of offending, as long as the offender is a juvenile. However, the definition suggests, that juvenile justice is only a part of those institutions, which are contributing in controlling juvenile

criminality. As Lévay (2005) suggest, the reason of extending the range of institutions involved into tackling youth criminality is the recognition that juvenile justice embedded into the criminal justice system cannot deal with the problem alone. Prevention (most importantly on secondary and tertiary levels) seeks the assistance of other professions, which co-operate closely with justice institutions. One of the principal aims in the course of establishing or changing this system should be, that "interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances" (Rec(2003)20, II/5).

Regarding to the complementary role of child protection in juvenile justice it is important to notice, that the idea behind the institutions, services, and role of this system is probably as colourful as the build-up of juvenile justice systems in Europe (Hearn et. el, 2004). Some systems undertake the role of maintaining the social welfare of the given population responding to their basic needs through social support. Others complement the basic welfare services, including the task of supporting the wellbeing of children. Whether a child is diverted to a purely administrative system that offers nothing more than supervision or he receives intensive support from primarily non-institutional care providers, makes a difference in both the actual quality of the intervention and its evaluation form the human rights' point of view. Therefore, when talking about child protective intervention as an alternative to justice intervention, at the evaluation of the actual measure applied to the child shall the systematic characteristics and the approach of the respective system shall be taken into account as well.

The handful of international attempts to define juvenile justice shows how problematic and probably unnecessary it is to draw borders between the formal reactions that serve child protective goals and those which serve the goals of the justice system. Rec(2003)20 highlights the fact that preventing delinquency on any stage of prevention is not exclusively the task of criminal justice, but it should be realised in an interconnected net of support by various actors of the field. It is not detailed further how the institutions should work together, although instructions on the cooperation both in legal terms and in practical context would provide important input on system-models.

III.3. Key issues of contemporary juvenile justice systems in Europe

When I summarised international requirements on juvenile justice systems, I limited my focus to the key issues and problematic questions European countries have to deal with. I intended to find sources that are published by an (1) independent international body, (2) that is able to screen the whole system of juvenile justice, (3) taking children's rights requirements into consideration. When looking at possible sources, I found, that the most direct and fairly objective resources about the implementation of children's rights are the concluding observations of the Committee on the Rights of the Child. It is an independent international body of experts, who provide, as it is mentioned above, clear recommendations on the administration of juvenile justice based on the UNCRC, and give input on the state of implementation to all countries of the world. Concerns raised and recommendations formed by the Committee are peculiar, but they reflect to the criteria listed in the UNCRC and

General Comment No. 10 on juvenile justice, and therefore they are comparable. Although it is true, that the analysis of exclusively concerns and recommendations does not explain the problematic aspects as detailed in general policy and institutional build-up of a juvenile justice system, but at this stage of the research it is not necessary. This subchapter only aims to discover those areas of the administration of juvenile justice (and in some respect child protection) in the countries of the European Union, which shall be further analysed with regard to the extent of concerns.

I have assessed the concluding observations on the administration of juvenile justice of the Committee regarding to the Member States of the European Union to be able to allocate the most problematic issues. I used the latest available concluding observations to the 28 countries of the European Union[10] until 31 December 2014, that may be argued to bias the information with regard to two facts: On the one hand, there are significant differences between the years of reporting (see Figure 2), and therefore one can argue that at the time of this analysis some of the here mentioned violations are already eliminated whild new issues have risen and therefore it is not relevant in a number of countries. On the other hand, it is possible that at the time of the publication of this thesis updates on the state of implementation in several countries are already available, and therefore my results are not fully up-to-date anymore. I find both observations valid, however I would like to point out here, that bias of some extent is unavoidable in legal comparative works. It lies on many different circumstances besides the intent and opportunities of the researcher. In this case it depends on the rhythm of reporting and delay in evaluation. Although countries shall report to the Committee in every five years, reviewing the report requires in fact a moderately long period. For example, in case of Hungary the reporting period ended in 2012, and both the government of Hungary and the independent organisations closed their reports in 2012. After the official procedure the Committee published its concluding observations on 14 October 2014, thus about two years after the due date of the reports. During the period between the due date of the report and the concluding observations genuine changes had happened in the Hungarian juvenile justice system. Although the Committee "made up the leeway" and the negative developments of these approximately two years have been also reflected in the concluding observations, relationship is sometimes hard to be established between the reported facts and the conclusions. The long "waiting list" and the need for careful consideration of the reported progress, in addition to the fact that rotation of countries

[10] CRC Concluding observations: **Austria**, No. CRC/C/AUT/CO/3-4 of 5 October 2012; **Belgium**, No. CRC/C/BEL/CO/3-4 of 18 June 2010; **Bulgaria**, No. CRC/C/BGR/CO/2 of 23 June 2008; **Cyprus**, No. CRC/C/CYP/CO/3-4 of 10 August 2012; **Croatia**, No. CRC/C/HVR/CO/3-4 of 13 October 2014; **Czech Republic**, No. CRC/C/CZE/CO/3-4 of 4 August 2011; **Denmark**, No. CRC/C/DNK/CO/4 of 7 April 2011; **Estonia**, No. CRC/C/15/Add.196 of 17 March 2003; **Finland**, No. CRC/C/FIN/CO/4 of 3 August, 2011; **France,** No. CRC/C/FRA/CO/4 of 11 June 2009; **Germany,** No. CRC/C/DEU/CO/3-4 of 25 February 2014; **Greece** CRC/C/GRC/CO/2-3. 13 August 2012; **Hungary,** No. CRC/C/HUN/CO/3-4 of 14 October 2014; **Ireland**, No. CRC/C/IRL/CO/2 of 29 September 2006; **Italy**, No. CRC/C/ITA/CO/3-4, 31 October 2011; **Latvia**, No. CRC/C/LVA/CO/2, of 28 June 2006; **Lithuania**, No. CRC/C/LTU/CO/3-4 of 4 October 2013; **Luxembourg**, No. CRC/C/LTU/CO/3-4. of 29 October 2013; **Malta,** No. CRC/C/MLT/CO/2, of 18 June 2013; **Netherlands**, No. CRC/C/NLD/CO/3. of 27 March 2009; **Poland**, No. CRC/C/15/Add.194 of 30 October 2002; **Portugal**, No. CRC/C/PRT/CO/3-4 of 12 November 2012; **Romania**, No. CRC/C/ROM/CO/4, 30 June 2009; **Slovakia**, No. CRC/C/SVK/CO/2 of 10 July 2007; **Slovenia**, No. CRC/C/SVN/CO/3-4 of 14 June 2013; **Spain**, No. CRC/C/ESP/CO/3-4, of 3 November 2010; **Sweden**, No. CRC/C/SWE/CO/4 of 26 June 2009; **United Kingdom**, No. CRC/C/GBR/CO/4. Of 20 October 2008.

happens regardless to their geographical situation (thus European countries are not monitored after each other), do not allow real cross-sectional analysis. Concerning to this, research has to be careful when drawing conclusions from the available sources, and shall restrict itself to observe tendencies within a given time-period. Keeping in mind the above limitations of this analysis, I only have the opportunity to show the typical problem areas of the last decade in the European Union.

Figure 2. The year of the latest concluding observations

I sorted the recommendations into 5 categories following the system of General Comment No. 10: recommendations addressing (1) leading principles, (2) core elements of juvenile justice, (3) the organisation of juvenile justice, (4) awareness raising and training, and (5) data collection, evaluation and research.

III.3.1. Leading principles of a comprehensive policy

The most problematic and most visible area of breaching leading principles of children's rights is the discrimination of particular groups of the population, such as sexual or ethnic minorities. Naturally, this is not a particularity of the justice system, but it is present both in formal and non-formal processes of the society. The requirement of non-discrimination in juvenile justice is fulfilled, if states establish a consistent policy that

involves „vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists)" (General Comment No. 10, point 6). In this regard the Committee expressly opposed status offences as a reaction to behavioural problems of children, since they openly discriminate children compared to adults, who cannot be punished for the same behaviour (General Comment No. 10, point 8).

The discrimination of Roma children is basically the most common violation of the requirement of non-discrimination. Based on the concerns listed in the concluding observations, a number of countries in Europe have to take measures against discrimination, first of all regarding to discriminatory practices in education and overrepresentation in residential child care. Eastern European countries with a comparably high proportion of Roma population, such as Bulgaria, the Czech Republic, Croatia, Hungary, Romania, Poland, Slovakia, and Slovenia were all reminded to continue raising awareness of the rights of Roma and promote avoiding discriminatory practices against children. Although Western European countries have a smaller Roma population, problems seem to be similar to those in the East of Europe: Roma children have no access to quality education, proper housing, and suffer from exclusion. Even Finland, that received no comments about concerns regarding to juvenile justice, has been reminded by the Committee to undertake measures to combat structural discrimination of the Roma population. In case of Italy and Greece concerns about the discrimination of Roma in juvenile justice have been expressly mentioned by the Committee, referring to the increasing number of foreign and Roma children who have been stopped and arrested for petty crimes during the reporting period, and the observation that Roma children "benefit to a much lesser extent from diversion and other alternative measures provided for by the law" than Italian children (CRC/C/ITA/CO/3-4).

But Roma is not the only minority group that needs more protection in Europe. Turkish children in Cyprus, Russian children in Estonia, migrant children in Denmark, Germany, Greece, Malta, Portugal, Spain, Sweden and the UK, travellers and other ethnic minorities in France and the UK, and children with disabilities in the whole Europe are also in risk of both *de iure* and *de facto* discrimination.

III.3.2. The core elements of a comprehensive policy

A. Prevention of juvenile delinquency

The obligation of countries to promote preventive practices originates from the child's right to harmonious development of his personality, talents and mental and physical abilities (see Preamble, and Art. 6 and 29 of the UNCRC). As the review of developmental studies (Chapter II) shows, committing crimes in a young age is not a sign of healthy and harmonious development, but the opposite: it is the sign of disadvantageous determinants in the environment of the child. Therefore, supporting families, promoting good parenting strategies, providing housing and ensuring healthy environment of the child is not only the necessary protection that every child has the right to enjoy, but also prevention from the risk that may develop into deviant behaviour. The Riyadh Guidelines state „the well-being of young

persons from their early childhood should be the focus of any preventive programme" (Point 4). The focus areas of prevention of juvenile delinquency, as highlighted in the Guidelines correspond to the results of developmental research, when they focus on socialisation processes on the one hand, and herein especially family environment, education, mass media and intervention in communities, and social policies on the other hand. Accordingly, General Comment No. 10 states "a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings" (point 17). A comprehensive plan on prevention strategies shall involve the following set of measures:

- "In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;
- Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
- Mechanisms for the appropriate coordination of prevention efforts between governmental and non-governmental agencies;
- Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- Methods for effectively reducing the opportunity to commit delinquent acts;
- Community involvement through a wide range of services and programmes;
- Close interdisciplinary cooperation between national, State, provincial and local governments, with the involvement of the private sector representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- Specialized personnel at all levels" (Riyadh Guidelines, point 9).

The Committee had expressed its concerns about the preventive strategies or the juvenile justice policy of six countries in the present sample: Bulgaria, Cyprus, France, Ireland, Romania and Spain. In case of Bulgaria and Cyprus the Committee recommended to the countries to pay more attention on applying early intervention as prevention. France, Romania and Spain have been urged to strengthen preventive measures that support the role of families and communities in order to help eliminate the social conditions leading children to enter in contact with the criminal justice system and to avoid stigmatisation of children. Preventive measures were contrasted by the Committee against Anti-Social Behaviour regulation in Ireland, with regard to their stigmatising effect that helps to bring children at risk closer to juvenile justice. As according to the recommendation of the Committee, family-based preventive measures shall always have a priority before Anti-Social Behaviour Orders, which should be only used as a last resort[11].

[11] Anti-social Behaviour Orders in Ireland and the UK are (were) mainly used as a reaction to status offences of children and to public nuisance. Its nature and relevance regarding children's rights will be discussed in Chapters V and VI.

B. Interventions/Diversion

Minor criminality of children and the proper reactions to these acts have been in the spotlight of professional debate in many European countries in the last decade, and therefore the expert committee of children's rights could not miss to provide guidance on this issue. General Comment No. 10 distinguishes interventions that resort to judicial proceedings, and interventions that do not. Article 40(3)b) of the UNCRC requires that countries intervene by means of measures that do not resort in judicial intervention, whenever it is appropriate and desirable. This applies to the majority of the children who commit criminal offences according to the Committee, because most of the children commit only minor offences. Therefore countries are urged to provide a wide range of measures that guarantee the children's removal from the juvenile justice system and their referral to alternative (social) services. The alternatives applicable to this case are e.g. community-based programmes, such as community service, supervision and guidance by social workers or probation officers, family conferencing and other forms of restorative justice. Measures that "divert" child offenders from the juvenile justice system have to correspond to the following specific characteristics according to the Committee:

- diversion is only offered and used, when there is convincing evidence available that the child committed the offence;
- the child shall acknowledge his/her responsibility;
- the child shall freely and voluntarily consent to the diversion (in case of children under 16 states might consider to require the agreement of parents as well);
- the laws shall indicate the power of the authorities, and the cases where diversion is possible, and the decisions shall be reviewed in order to prevent discrimination;
- the child shall be given the opportunity to consult with legal or other assistance on the appropriateness and desirability of the diversion;
- the completion of the diversion by the child should result in a definite and final closure of the case, and the access to the criminal record of any kind shall be restricted (General Comment No. 10, point 13).

These procedures are required to be always primary compared to the judicial procedures, and measures elaborated in line with the requirements on general preventions of juvenile delinquency should always aim to "avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others" (Riyadh Guidelines, point 5).

Based on the concluding observations of the Committee it seems, that countries need more appropriate guidance or more pressure to implement these requirements. The Committee has urged 14 countries to implement alternatives to deprivation of liberty, and 4 countries to promote diversion and alternative measures to detention, and whenever possible, allocate sufficient human technical and financial resources. Concerns have been raised in the concluding observations of 6 countries regarding to the control of minor criminality or

antisocial behaviour. 10 Member States of the European Union, thus practically one third of the countries did not get any comment on providing detention alternatives and diversion.

C. Age and children in conflict with the law

a) Article 40 paragraph 3, point (a) of the UNCRC provides a relatively weak requirement on MACR, when it states that "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law". The Beijing Rules narrow requirement of Article 40 of the UNCRC somewhat in Rule 4, when requiring that "in those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". This requirement indicates that countries shall underpin their general or individual judgement on the criminal responsibility of the child, but still do not provide clear indications of a universally accepted 'proper age', and therefore provide wide range of legislative opportunities in terms implementation. As according to the Commentary on this Rule, "the modern approach [on establishing MACR] would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour". The commentary contradicts itself slightly, when it admits, that efforts should be made to agree on a reasonable lowest age limit that is applicable internationally, while on Rule 2.2 it states that a wide range of differences in age limits following from economic, social, political, cultural and legal systems of Member States is inevitable. Nevertheless, as according to the UN regulations, a) it is required of States Parties to establish MACR, b) it shall comply with the development of children, c) the application of justice measures shall be prohibited under this age.

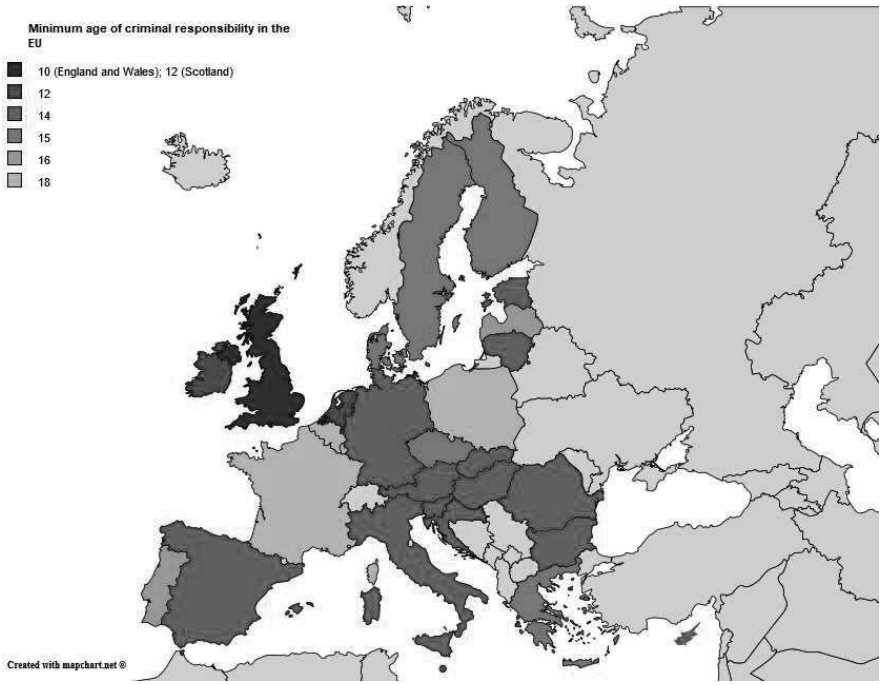
Efforts to establish an absolute age limit have been taken by the Committee on the Rights of the Child in the General Comment No 10. Herein the Committee gives detailed explanation on the acceptable and unacceptable legislative techniques on establishing MACR (point 16). The Committee reads the relevant article of the UNCRC as follows:

- Children below MACR, who commit an offence, cannot be held responsible for their offence in a penal procedure, regardless to their capacity to infringe penal law. If it is necessary in the best interest of these children, protective measures shall be taken.
- Children at or above MACR but below 18, who commit and offence, can be formally charged in a special (juvenile) penal procedure, that is in full compliance with the principled of the UNCRC and General Comment No. 10.

The Committee does not find any age limit under 12 internationally acceptable, based on the recommendations of the Beijing Rules, designating this age limit as an "absolute minimum" that is still acceptable. However, the acceptable limit is not necessarily recommendable as well: the Committee highlights right after setting the absolute minimum, that 14 or 16 are more recommendable minimum age limits for criminal responsibility (point 17). Naturally, the implication of MACR should be analysed further and evaluated based on the measures that are allowed to be applied for certain age groups below or above that. Legal safeguards provided for both children below MACR and above should ensure the fair and just

treatment of children who committed crimes. This must be true regardless to their age, therefore the Committee finds the practice of applying lower minimum age in case of more serious offences than general MACR confusing for courts, which leaves too much room for discriminatory decisions. Furthermore, the court shall always prove the juvenile age (point 18). If it is not possible to prove that the child has reached the age of MACR, he cannot be charged in penal procedure (point 19). Figure 2 shows the MACR in European countries[12].

Figure 3. MACR in European countries



The Committee expressed its concerns about 8 countries regarding their legislation on MACR, concluding that it was too law or not clear enough to be able to ensure the appropriate protection to children committing crimes. Bulgaria, France, Greece, Hungary, Ireland, Malta and Great Britain, while Denmark was call upon to reinstate MACR to 15. Since the regulation of MACR is one of the most important issues in the regulation of juvenile justice, it is reasonable to look at the concerns of the Committee in detail.

France has not established MACR, and children below the age 13 may be punished by criminal measures (CRC/C/FRA/CO/4). The Committee recommended the elimination of this practice through setting a clear MACR. Bulgaria was also recommended to make a clear definition of MACR in order to guarantee that children under fourteen are treated outside of the justice system, and they are not subject of juvenile educational measures (CRC/C/BGR/CO/2, point 69. (c)), similarly to Greece, where children may be subject of treatment with regard to the criminal act they committed, from the age of 8 (CRIN, 2015)[13].

[12] Figure 3 is based on the document *'Summary of contextual overviews on children's involvement in criminal judicial proceedings in 28 Member States of the European Union'* of the European Commission of 2014.

[13] Source: Minimum ages of criminal responsibility in Europe. Retrieved from

Although efforts had been taken in Ireland to raise MACR to 14, it remained comparably low (12) with the exception of serious cases where children from 10 can be tried in juvenile court. The Committee raised concerns about the (still) undone amendment of laws (CRC/C/IRL/CO/2). The MACR as low as 9 in Malta was recommended by the Committee to be raised to 14, but this did not happen since 2013. *Denmark* has lowered MACR in 2010 from 15 to 14, and about this legislative step the Committee expressed her deep concerns (CRC/C/DNK/CO/4). About the regulation of *Hungary* and *Great Britain* as well as the concerns of the Committee Chapter V contains more information.

MACR has an important impact not only on those child offenders, who become a subject to the juvenile justice procedures with regard to the age limit, but also those who become subject to the child protection. This is true to procedural rights, as well as to the restricted use of deprivation of liberty. With regard to legal bias in this respect, the Committee reminded the Czech Republic and Greece in her concluding observations that children under the age of MACR shall have the same level of guarantees like those children who are legally called juveniles (see CRC/C/GRC/CO/2-3 and more about the Czech regulation in Chapter VI).

b) Although MACR holds particularly great importance with regard to the harm a possible juvenile justice measure may cause if applied in the (too) young age, both scientists and the Committee on the Rights of the Child agree in the similar importance of setting upper age limits for juvenile justice. The Committee claims that special rules on juvenile procedures and measures shall apply to every person, who has reached MACR, but who has not reached 18 at the time of the alleged commission of the offence yet (General Comment No. 10, point 20).

Although these requirements are clearly stated and established by legal documents, they do not perfectly respond to the developmental reality discovered by scientific research. Scientists state, that the age of majority has almost no connection with any particular developmental stage whatsoever, since the human brain changes up until about the age 25 (Loeber et al., 2012, pp. 346-348). Accordingly, research shows that reckless behaviour tends to decrease only in early adulthood. This phenomenon is explained by the emergence of the higher executive functions in the brain that imply better control of emotions and impulse and the ability of planful problem solving. With regard to these results researchers recommend that laws respect this transition period from the adolescence to adulthood often called as ‘young adulthood’ expressly. Based on the recommendations of scientists, the respective processes and measures should be similar to the juvenile laws rather than those for adult offenders, and should focus on the specific treatment of young adults, but they should not lead to breakage in the strict division of childhood and adulthood (Liefaard, 2012, pp. 192-193). The Committee seems to agree with this requirement, when stating that states should not limit the applicability of juvenile justice to children under the age of 16, or allow the legal opportunity of the exception that 16-17 year old children are treated as adults in the justice system (General Comment No. 21).

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https://www.crin.org/en/home/ages/europe (09/07/2016)

Despite the above recommendations and the concerns of the Committee addressed in her concluding observations, there are countries, which still insist to keep to their legal traditions or special legal institutions that allow more severe treatment of children between 16 and 18, and even their transition to the adult justice system at the time of their last report. Concerns on the full implementation of the UNCRC in this regard were expressed by the Committee to Belgium, Croatia, Malta, Romania and Great Britain. Although the Netherlands maintains its reservation on Articles 26, 37(c) and 40 of the UNCRC, and therefore unlawfulness of the transfer to adult courts cannot be claimed, its consequences are comparable to the other countries' transfer rules. It will be analysed in the following chapters.

D. The guarantees for a fair trial

a) Article 40 paragraph (2) of the UNCRC lists the most important guarantees that ensure the children alleged as or accused of having committed a criminal offence participate in a process where they are treated fairly. The guarantees highlighted by the Committee correspond to the general human rights law as it is declared in the ICCPR:

- Prohibition of retroactive justice (Art. 40(2)(a)).
- The presumption of innocence (Art. 40(2)(b)(i)).
- The right to effective participation in the proceedings (Art 40(2)(b)(iv)).
- Prompt and direct information of the charge(s) (Art.40(2)(b)(ii)).
- Legal or other appropriate assistance (Art. 40(2)(b)(ii)).
- Decisions without delay and with involvement of parents (Art. 40(2)(b)(iii)).
- Freedom from compulsory self-incrimination (Art. 40(2)(b)(iv)).
- Presence and examination of witnesses (Art. 40(2)(b)(iv)).
- The right to appeal (Art. 40(2)(b)(v)).
- Free assistance of an interpreter (Art. 40(2)(vi)).
- Full respect of privacy (Arts. 16 and 40(2)(b)(vii)).

Apart from the above listed specific guarantees in the juvenile procedure, every child has the right to be heard in juvenile justice procedures and any other (administrative) procedure (Art. 12 of the UNCRC). This rule implies a general requirement towards state authorities to take the child's opinion into consideration in any case relevant to him (thus not exclusively in cases where he is accused or convicted), and suggest an even stronger obligation in a system that determines the present and the future of the in the extent like juvenile justice does.

When looking at the concerns addressed by the Committee to the States Parties, the implementation of these legal guarantees does not seem to be an exceptionally problematic field, probably with regard to the similarity to general justice regulation. However, full implementation is still a distant goal. In the past years the Committee recommended a number of steps to direct countries towards the perfection in this respect. In 2012 Greece was urged by the Committee to take legislative steps to incorporate a special procedure for juveniles into its Penal Code, to be able to ensure the emergence of the above guarantees (CRC/C/GRC/CO/2-3). In 2009 the Committee found that procedural rights of children were "violated during the investigation stage including access to a lawyer, coercion to extract statement or confession" in Romania, therefore the country was urged to ensure that the right to fair trial is respected in

all stages of the proceedings (CRC/C/ROM/CO/4). Similarly to the Romanian example Belgium and France were urged to implement guarantees, with regard to concerns emerging on ensuring the access to the assistance of a lawyer and, within the procedures, a trusted adult person in every stage of the proceeding including questioning by the police (CRC/C/BEL/CO/3-4; CRC/C/FRA/CO/4).

b) Fair trial cannot be guaranteed exclusively through legal provisions. It is necessary to have qualified and experienced staff in all justice institutions and beyond, who are able to recognize and react to youth problems and apply practices corresponding to human rights requirement, in order to ensure, that the procedure serves the careful determination of the best interest of the child. Although this requirement is obviously a crucial element of a fair trial, a number of European countries still fail to manage to elaborate appropriate and sustainable programmes that would ensure the education or training of justice personnel. The extent of the gap in implementation of this requirement shows in the concluding observations of the Committee, in which they reminded 14 countries to set up programmes that aim to train specialised judges to understand the needs of children while 7 of these were urged to take steps to improve training on human rights of justice and child protection personnel.

E. Deprivation of liberty including pre-trial detention and post-trial incarceration

The rules of the UNCRC as well as the guidelines that support its implementation suggest that deprivation of liberty of children is neither appropriate nor supported measure of dealing with youth criminality. Article 37 paragraph b) of the UNCRC declares that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention orimprisonment of a child shall be in conformity with the law and shall be used only as a measure of lastresort and for the shortest appropriate period of time." Thus, the restrictions shall apply not only to convicted children, but any child who has been arrested or detained in pre-trial arrest. In General Comment No. 10. the Committee highlights, that "in many countries, children languish in pre-trial detention for months or even years, which constitutes a grave violation of article 37(b) CRC." Therefore, as the Committee recommends it, states should provide appropriate alternatives in their justice systems, not only to the sanctions but pre-trial measures as well, to avoid unnecessary harm. The rules of the ICCPR complete the rules of the UNCRC when requiring that juvenile offenders or those alleged with an offence are not detained together with adults, or other children who are not placed in the given institution with regard to delinquent act (Art. 10). The standards on the appropriate conditions of detention are detailed in Rec(2008)11.

It is definitely no hyperbolism to state that deprivation of liberty is the most important issue in the administration of juvenile justice of the European countries. The comments and recommendations of the Committee show that the restriction of the use of deprivation of liberty as a penal measure, and its replacement with suitable alternative measures is a challenge for Europe. Muncie (2008) commented on this phenomenon in his article about the 'punitive turn' in Western Europe and the USA somewhat pessimistically, when concluding that countries tend to ignore these (exceptionally) unwanted rules in the already unwanted Convention. He found disappointing that almost all states in his analysis, with the exception of Norway, were recommended to give more consideration to implementing principles listed

in Articles 37, 39 and 40 of UNCRC. Moreover, as a sign of 'punitive' tendencies, concluding observations reported about growing number of children in detention, and with regard to this the violation of the requirements of 'last resort' and the 'shortest appropriate period' of deprivation of liberty between 2001 and 2006.

In the present sample 21 out of 28 countries of the EU were urged by the Committee to take measures for restricting the use of deprivation of liberty to the las last resort and for the shortest appropriate period of time. Out of these Croatia, Denmark, Estonia, France, Hungary, Latvia, the Netherlands, and Poland were recommended to restrict the application of pre-trial detention in particular. Hungary and the Czech Republic were recommended to avoid deprivation of liberty as a sanction of petty offences.

In 8 countries (Austria, Croatia, Czech Republic, Denmark, Estonia, Ireland, the Netherlands, Great Britain) the Committee recommended that juveniles are separated from adult offenders. The application of solitary confinement as disciplinary measure in detention was also mentioned as a practice that shall be avoided, and 5 countries (Belgium, Denmark, Portugal, Sweden and Luxemburg) were urged to abolish the legal opportunity for de facto isolation.

A number of countries were warned that they should improve the conditions of detention. Typical problems regarding conditions were

- overcrowding (Austria and Bulgaria),
- inappropriate education (Romania, UK),
- lack of appropriate medical and psychological treatment (Austria, Croatia and Luxemburg)
- violation of children's rights in detention to e.g. meet their families, access appropriate assistance (Belgium, Bulgaria, France, Italy, Romania, Slovakia, Great Britain),
- lack of attention paid to social reintegration and rehabilitation (Austria, France, Romania, Slovenia, Spain)

The manner of deprivation of liberty of children does not raise concerns in Finland, Cyprus, Lithuania, and Malta, although the juvenile justice systems of Lithuania and Malta suffer from the lack of holistic implementation of children's rights. As the above critics show, there is a large variety of problematic issues that may be discovered in the juvenile justice systems, and there is still a lot to do until the full implementation of the UNCRC.

F. Applying alternatives in juvenile justice

The UNCRC expressly requires that States Parties provide a "variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence children" (Art. 40(4)). According to General Comment No. 10 of the Committee, the national laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of possible alternatives that they may apply instead of institutional care and deprivation of liberty. The authorities shall be able to apply measures that are in proportion to the circumstances of the child, the gravity of his offence as well as his age, lesser culpability, his

needs, and the long-term interests of the society. In line with these requirements and the basic principles of the UNCRC, a strictly punitive approach cannot be acceptable in juvenile justice. In this regard corporal punishment as a sanction is a particularly severe violation of Article 37 and the basic principles according to the Committee (see also General Comment No 8 (2006)).

14 countries (Belgium, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Slovenia and Spain) have been urged to implement more alternatives to deprivation of liberty in general, and 4 countries need to promote diversion and alternative measures to detention. This means that about the half of the Member States of the European Union do not fulfil the requirement on providing appropriate amount and/or quality of alternative measures to detention.

Two other dispositions that are mentioned by the Committee are not of particular relevance in Europe: prohibition of the death penalty, as it is read in Article 37 paragraph (a) of the UNCRC, reaffirming the „internationally accepted standard (see e.g. art. 6(5) ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age" (General Comment No. 10, point 26), is not a subject matter of European laws. Neither is life imprisonment of children without parole a matter of debate, although this does not mean that life imprisonment with the possibility of parole has not been on the agenda of European states. In the Committee's previous concluding observations the Netherlands was urged to prohibit applying life imprisonment for children. Since 2008 this is not possible anymore in the Netherlands: Paragraph 2 of Article 77b of the Penal Code excludes life sentence against children under 18 even if they are transferred to under adult jurisdiction came into force on 1 February 2008 (Cleiren, Crijns & Verpalen, 2014, p. 555).

III.3.3. The organisation of juvenile justice

The most important requirements of General Comment No. 10 on this subject are as follows:

- special chapters in criminal material and procedural laws or separate juvenile law;
- specialized units within the state justice institutions and specialized defenders or other representatives who provide legal or other appropriate assistance;
- juvenile courts or separate juvenile units;
- specialised units in justice services (e.g. probation, day treatment centres)
- involvement of non-governmental organisations.

According to the report of the European Commission, Directorate General for Justice (2014, pp. 8-9) 20 jurisdictions of the EU have specialist courts that deal with juvenile justice[14], 13 of which deal only with juvenile cases. There are different solutions to the separation from adult offenders: some countries adapted their ordinary courtrooms to the needs of children, while in other countries child courtrooms are physically separated from those of adults. Bulgaria, Cyprus, Estonia, Finland, Hungary, Lithuania, Latvia, Sweden and Slovakia have not established specialised courts, and in Romania and Poland juvenile court

[14] Jurisdiction in this context does not refer to one jurisdiction per member state. The UK consists of three different jurisdictions, namely England and Wales, Northern Ireland and Scotland.

are not available in every region, therefore some child offenders are dealt with adult courts. The Committee urged Estonia, Hungary and Lithuania and Romania in her concluding observations to (re)establish juvenile courts or appoint juvenile judges responsible exclusively for juvenile offenders, and make their jurisdiction available to every child.

Special units of police forces are organised in 14 jurisdictions, although only in 9 jurisdictions (Belgium, Estonia, France, Luxemburg, the Netherlands, the Czech Republic, Italy and Ireland) deal the specialised units with youth offenders (European Commission, 2014, pp. 9-10).

Countries are not only urged to act, but some of them are frequently reminded in the concluding observations of the Committee to seek technical assistance and other cooperation from the UN Interagency Panel on Juvenile Justice (IPJJ). IPJJ, the organisation of 13 international NGO's, has been established because the "international community realised that there was an urgent need for close cooperation between all UN bodies in the field of juvenile justice and invited NGO's to support the provision of advisory services in this field".[15] They aim to increase the availability of information, publications, tools and advice regarding juvenile justice and as a part of this they provide advice for stakeholders dealing with child offenders.

III.3.4. Awareness raising and training

According to the Committee on the Rights of the Child representatives of media are responsible for eliminating the untrue picture of growing juvenile delinquency and the high proportion of violent crimes from being common talk. They should promote the better understanding on causes that lead to youth criminality instead, and create a sensitive manner of debate and thinking about this social problem. Education and awareness raising campaigns of governmental institutions and NGO's should get the opportunity to inform people about the need and obligation of dealing with youth criminality, and create a positive approach to children who have been or are in conflict with the law. These campaigns should promote the participation of children concerned (General Comment No. 10).

As it shows from the concluding observations, many European countries did steps towards systematic education of the values of the UNCRC in schools, as well as awareness-raising of the general population. Efforts taken in this regard were welcomed by the Committee that encouraged every county in her concluding observations to continue this work and promote the approach of the UNCRC in the whole Europe, and ensure that all children – including minority, immigrant or disabled – are able to understand their rights. Therefore the Committee urged several countries to translate UNCRC to minority languages not only in their European territories, but in other continents as well. Juvenile justice laws and measures

[15] The member organizations are: Committee on the Rights of the Child; Child Rights International Network (CRIN); Defence for Children International; United Nations Department of Peacekeeping Operations; International Association of Youth and Family Judges and Magistrates; International Juvenile Justice Observatory; Office of the United Nations High Commissioner for Human Rights; World Organisation Against Torture; Penal Reform International; Terre des hommes - child relief; United Nations Development Programme; United Nations Children's Fund; United Nations Office on Drugs and Crime. Information accessed on 26 October 2015 from http://www.ipjj.org/about-us/ipjj/

can only be understood and challenged if people have a holistic understanding on their purpose and meaning. Therefore it is very important that people – and in particular children – understand causes and consequences of criminality as a part of social problems and as a consequence of failure in guaranteeing children's rights.

Awareness raising and training of adults is equally important as it is for children. In the past 10 years almost all countries of the present sample were recommended to take steps towards providing education on children's rights and children's needs to their justice-personnel, including officers of law enforcement, judges, prosecutors, public defence. In light of this fact, the warning to the need for educated and prepared staff seems to be the most important among the warnings mentioned in this subchapter.

III.3.5. Data collection, evaluation and research

Collecting data on the work of juvenile justice is crucial for the proper evaluation and better improvement of the system. Therefore the Committee recommends the States Parties to collect data on the practice of the administration of juvenile justice, inter alia on:

- quantity and the nature of offences committed by children,
- the use and the average length of duration of pre-trial detention,
- the number of children dealt with by the use of measures without resorting to judicial proceedings (diversion),
- the number of convicted children and the nature of the sanctions imposed on them (General Comment No. 10, point 34).

Conducting research on the quality of specific institutions and services of juvenile justice, such as "on the disparities in the administration of juvenile justice which may amount to discrimination, and developments in the field of juvenile delinquency, such as effective diversion programmes or newly emerging juvenile delinquency activities" (General Comment No. 10, point 35), completes the above general information about juvenile justice. It shows "what works" and what does not work in juvenile justice and provides input to the development of field programmes. Since these institutions and programmes are usually run and financed by the government, the Committee recommends that the independent nature of the research is ensured by assigning academic institutions to do the evaluation. The expertise of these institutions shall guarantee quality and their impartiality avoids considering political interests. The privacy of the children participating in these research projects shall be fully respected and protected.

Most countries were encouraged in the concluding observations to improve their data collection on vulnerable groups of the society, and within this most frequently on ethnic or sexual minorities, immigrants, disabled children, and children living in poverty. Out of the 28 Member States only Cyprus, Malta, Poland received expressly addressed concerns about their data collection on juvenile justice. Austria, Finland, France, the Netherlands, Slovenia were encouraged by the Committee to make use of the data collected on juvenile justice in improving their juvenile policies.

III.3.6. Conclusion

The requirements and the most common and widespread problems in the administration of juvenile justice have been explained in this chapter in light of the last concluding observations of the Committee on the Rights of the Child, which were published in support of the 28 Member countries of the European Union. The analysis of the above problems point out some interesting developments and patterns in the juvenile justice systems, which may draw comprehensive picture on what we can or should call 'European problems':

The main problem areas of the regulation of European juvenile justice are the following (based on the concerns and recommendations of the Committee):

- the regulation on the deprivation of liberty, and especially the application of measures and sanctions as a measure of last resort and for the shortest appropriate period of time;
- elaboration and introduction of alternatives to deprivation of liberty;
- setting up programmes to train specialised staff in justice, with special regard to the training of judges;
- establishing an appropriate MACR;
- discrimination of Roma and immigrant children in juvenile justice;
- promoting preventive, rather than repressive strategies, most importantly in those cases where children are involved to minor criminality.

The human rights concerns of international bodies do not depend on the territorial or cultural background of the given state. According to the Committee the practice or legal regulation of the administration of juvenile justice is problematic in certain extent in basically all European countries, with the exception of Finland. There is no evidence to any territorial pattern regarding the typical issues within certain groups of countries either. Thus, observations that define certain human rights issues in juvenile justice institution as being typical "Eastern European" or "Western European" do not seem to be valid, and require more detailed explanation. Chapter VII aims to provide such a detailed comparative analysis about the systematic characteristics of juvenile justice in Hungary, Slovenia and the Czech Republic.

CHAPTER IV

INTRODUCTION TO JUVENILE JUSTICE MODELS

In order to be able understand the role and implementation of children´s rights in juvenile justice systems, one should have a broad picture on the system itself. In this sense, categorization may help in developing a systematic approach. As it has been described in Chapter 2, I will introduce the models of juvenile justice systems based on the clusters identified by John Winterdyk (2002). I will introduce and explain their typical characteristics through an actual juvenile justice system that belongs to the given model: (1) modified justice model: *the Netherlands;* (2) welfare model: *Belgium;* (3) corporatist model: *England;* (4) minimum intervention model: *Scotland;* (5) justice model: *Finland*, and (6) control model: *Hungary*. The countries follow each other in this Chapter in an order that I found the most practical thinking in terms of explaining common systematic features and cultural similarities. The order does not aim to represent any rating of evaluation.

The analysis will follow eight examination criteria:

(1) The *general philosophy* refers to the idea about the child who commits criminal act, and how it is reflected in the basic procedural elements and the institutional reactions in the juvenile justice system and/or the social system.

(2) *Understanding client behaviour* is based on different criminological theories on the source of criminal behaviour. Those models, which are rather based on the determinist ideal on juvenile delinquency, are more likely to understand client behaviour as a result of failure in socialization or personal characteristics. As opposed to this, those models which are based on the theories of rational choice are rather focusing on the appropriate level of repression in justice avoiding the reflection of the prior personal history (e.g. Gottfredson & Hirschi, 1990). However in is to be noted, that none of the systems apply universal understanding on the client behaviour. The perception of the behaviour and the justice reaction reflecting to this tends to depend on the gravity of the offence and the age of the child offender.

(3) Accordingly, the *purpose of intervention* in the first case reflects to the understanding of client behaviour and tries to give appropriate answers: either keeping the child within the justice system, or divert him to the child protection or health care system that is assumed to be more relevant for his problems. If the system follows rather repressive philosophy, the purpose of the intervention tend reflect rather to the (assumed) need of the society, such as public safety and order instead of taking individual needs into account.

(4) *Objectives* of the models trace out the aims in focus of the systems, showing a broad variety from focusing on the most important needs of the child to the needs of the society.

(5) In order to serve the objectives, every model has typical *tasks to fulfil*. The repressive systems are more likely to establish systematic tasks, such as opening new and safer detention facilities, and pay more attention to public order, while if the education is in

focus, attention is rather paid to improve treatment methodologies to ensure that children grow in moral terms during their punishment and to prevent their reoffending.

(6) *Legal construction* of the models is based primarily on the binary understanding of juvenile justice systems: either it chooses to give freedom to the judges in sentencing and cooperates closely with welfare agencies in every stage of the procedure (welfare), or strictly regulates both the justice procedure and the types of punishments and measure, giving only a small space to the actors of the system to decide whether a given reaction is appropriate for a child (justice). Alternative legal constructions are rare within Europe, but in this analysis I am going to introduce the Scottish youth justice system as an example to these.

(7)-(8) *Key agencies* and *key personnel* are naturally those institutions and their staff which can fulfil the above requirements the most effectively, and thus, they fulfil the key role in the system.

(9) *Typical instruments* are shaped through the objectives and tasks in order to fit into the legal construction.

Keeping a relatively strict order at the analysis of the countries is important to be able to provide clear information on the same phenomena or, if it is not possible, to be able to explain the genuine difference regarding to the given aspect between justice systems.

IV.1. Modified justice model

Model Country: The Netherlands

1. The first regulation of the Netherlands on distinction between child and adult offenders appeared already in 1809. Although this was an important first step towards establishing juvenile justice, the regulation could not evolve because the country had been occupied by the French army one year later and the Code Pénal came into force in 1811 (Ferwerda, 2002). After a long time of equal judgement of children and adults, the New Dutch Penal Code of 1886 finally introduced special rules to juveniles and a MACR, under which criminal prosecution was excluded. The traditional characteristics of the general philosophy of the Dutch juvenile justice system dates back to 1901 when three so-called 'Children's Acts' were adopted: the act on the civil procedure of child protection, the act on the penal procedure, thus juvenile justice and the Child Framework Act (Ferwerda, 2002; Liefaard, 2008, p. 359-368). This regulatory framework strictly separated children in need of protection and children who committed criminal acts, while it also required that children were separated from adults and were charged for their offences exclusively under juvenile law. The juvenile law of 1901 established a justice-faced system underpinned with procedural guarantees for children, such as hearing behind closed doors, compulsory presence of the child in court, compulsory appointment of a lawyer on behalf of the child, and information to be gathered about the child's living conditions and character (Liefaard, 2008). Similarly to the Hungarian amendments at the same period (Csemáné & Lévay, 2002; Balogh, 1909), the Dutch juvenile law introduced specialized institutions for children (borstals) as well as special penalties (reprimand, small fine, education measure), and abolished MACR (Liefaard, 2008). The separate juvenile court has been established relatively late after the material rules, in 1921. Judges were entitled to try both civil and penal cases (Uit Beijerse & Swaaningen, 2006).

   The whole system had been revised in 1965, introducing large discretionary power for judges, assuming that they will act in every case in the best interest of the child. Parallel to granting freedom to the judge, procedural safeguards for children held little importance, and therefore proceedings became informal and flexible (Ferwerda, 2002). As a minimum standard, MACR was introduced again after more than 60 years: it was set at 12 years (Liefaard, 2008). The next comprehensive change in policy happened in the early 1990's, in the spirit of a more punitive approach that considered children as bearers of rights, entitled to similar legal safeguards as well as responsibilities as adults. The great traditional freedom of juvenile judges had been reduced, the system of measures and punishments available to juveniles had been simplified, and the maximum terms of juvenile sentences increased. The criminal policy emphasized the protection of the society in favour of the education of children. The possibility of the transition to adult court lead to an increasing number of 16 and 17 year olds being judged and sentenced based on adult criminal law (Uit Beijerse & Swaaningen, 2006).

   The changing governing philosophy of the Dutch juvenile justice received many comments over the turn of the millennium. The growing number of institutionalized juveniles (Detrick et al., 2008, p. 53-66; CRC/C/NLD/CO/3), the long term of pre-trial

arrest (CRC/C/NLD/CO/3), the discriminatory practices targeting minority communities (Uit Beijerse & Swaaningen, 2006), the generally considered punitiveness (Van der Laan, 2008; Weerman, 2007, Berger, 2012, p. 887) and the failing methodologies (Beijersbergen & Wartna, 2007; Van der Laan et al., 2009) were important warnings that the balance between legalistic approach and welfare elements has been deflected in favour of responsibilisation of children and the protection of the society (Pruin, 2010). In the first decade of the 21st century, important steps were taken both in legislative and methodological terms to restore the balance, moreover, to deflect it towards welfare predominance. In the Brand v. the Netherlands case the European Court of Human Rights established the child's right to compensation for delayed treatment after sentence, which may lead to lower chance to the success of the treatment (ECtHR, no. 49902/99). Children whose treatment had been delayed with more than 6 months, which period they had to spend in a juvenile institution, have right to a compensation of 350 euro/month which increases by every 3 months with 125 euros (Liefaard, 2008, p. 413). This led to the elimination of waiting lists to detention. In 2008, thanks to the pressure of the ratified children's rights documents, closed child protection facilities and juvenile detention centres had been divided. This was another step towards decreasing juvenile prison population. A new juvenile policy (*Aanpak Jeugdcriminaliteit*) came into force in 2007, which paid more attention to preventing crimes than punishing children and within this framework also to fast intervention and to follow-up care after imprisonment (Berger, 2012, p. 888). Juvenile measures had been systematically evaluated, and based on the negative results they were either abolished (such as Glenn Mills School and STOP measure) or revised (such as Halt), while new and more welfare-oriented methodologies were implemented. The approach on individual responsibility has shifted towards diminished responsibility in minor cases, although the policy on severe sanctioning remained in force for those children who commit serious offences. That this shifting is still ongoing shows in the concluding observations of the Committee on the Rights of the Child to the Netherlands in 2015. The Committee expressed its concerns about the

> "(a) Systematic detention of children in police custody for lengthy periods of time (up to 16 days);
> (b) Absence of specific protocols for juvenile suspects in police cells, where they are detained in the same cell blocks as adults;
> (c) Poor conditions in police cells and lack of monitoring on the conditions of detention of children;
> (d) High numbers of children in pre-trial detention in judicial youth centers for lengthy periods of time;
> (e) Absence of legal aid to children below the age of 12 years old who are interrogated by the police and to children who are suspected of committing minor offences;
> (g) DNA testing of children in conflict with the law and difficulties in obtaining a certificate of good conduct for children with a criminal record" (CRC/C/NDL/CO/4, point 58).

2. According to Ferwerda (2002, pp. 396-400) juvenile offenders in the Netherlands are classified as either “opportunity offenders” or “hardcore” offenders. The criminal activity of the first group is highly dependent on crime opportunities, the removal of which leads to decrease in occurrence. Therefore the most effective measures regarding this group are preventive measures that intervene either in the community (such as awareness raising and youth centres), or in the family (such as supervision or parenting courses), or in the environment (such as extra lightning, or closing off entrances). In those cases, where offences have already been committed, children seem to be sensitive to police contact, and respond well to pedagogical sanctions, because they generally worry about their future position in the society and the community. In addition to the generally lenient and community-based forms of justice response to criminal offence “it is generally believed that the best way to deal with these types of youths is for the police and the judicial system to respond as quickly as possible” according to Ferwerda (2002, p. 397). In order to deal with these offences and offenders as soon as possible, the pilot of the so-called ZSM-method (as selective, fast, common, clever and community-based possible) had been implemented in 2014. ZSM is basically a procedural method, based on the direct communication between all possible participants of the procedure. In juvenile cases it means that actors of the police, the public prosecutor, and the Council for Child Protection discuss cases of juvenile offenders on daily basis. After the examination of the relevant information on the case the public prosecutor may decide to bring children to court, to dismiss the case with or without laying down further conditions (Defence for Children NL, 2014). The second group consists of those juveniles who commit “hardcore” offences, or who show serious psychopathological problems. These children are seen often as adults and offenders who are dangerous to the society. As according to Ferwerda (2002, p. 398), police and courts attempt to “strike a balance between accountability and addressing the needs of the juvenile.”

   The two groups of juvenile offenders are not only separated in the research on juvenile delinquency, but on the level of justice reactions as well. Therefore the juvenile justice system of the Netherlands shows huge inconsistencies regarding the purpose of intervention. The most obtrusive example to this is the contradictory practice between the treatment of those juveniles who commit minor offences and those who commit serious offences. Minor offenders are principally treated in an age-sensitive manner that is allowed by the significant variety of punishments and measures available to the police, the public prosecutor and the judge. Minor offenders have to face a maximum of two years of imprisonment, but they are more likely to be diverted at some point of the procedure. Measures aim to treat them and help their re-integration to the society. At the same time serious offenders may even be transferred to under adult jurisdiction, where they lose their age-specific advantages not only in the procedure, but possibly during their sentence as well. While the punishments ought to serve the best interests of the children, they often expressly serve the best interest of the society presumed by the judge (Berger, 2012, p. 904), and contradict the requirements of the UNCRC on the administration of juvenile justice (see General Comment no. 10).

3. The Dutch system emphasises the security of the society before it would consider children's rights. As long as the child or juvenile does not threaten the peace and safety of the community, the most lenient method possible is applicable to his case. In addition to the low risk assessment, the system is designed to take every possible step to maintain or improve the individual conditions, therefore every reaction and sanction from the police level up to the judicial stage contains educational elements and treatments that aim to change behaviour. According to Uit Beijerse (2013, p. 195) the significance of the sanctions that aim to influence behaviour is becoming more and more important: the new measures such as night detention, electronic monitoring, and intensive supervision measures increase the control in the system. In those cases where the child represents too high risk and the security of the society cannot be guaranteed otherwise but only through deprivation of certain rights of the child, this price must be paid. At this point tertiary prevention loses its welfare-nature, and the flexibility easily becomes the tool of arbitrary approach.

The *bifurcation* in the *purpose of intervention* shows clearly in the two main trajectories that define the Dutch system: In the first, children who committed minor offences are diverted from the justice system by principle. The most commonly used justice alternative is the Halt measure, which is primarily an educational measure, but it also serves restorative goals. Children who do not want to participate in Halt or those for whom it is legally not available receive most likely non-judicial measures with special attention to that the treatment programme intervenes in those areas where the roots of delinquency lie. Both the police and the public prosecutor may use a broad range of alternatives to react to juvenile criminality (Berger, 2012, p. 891). In the second, juveniles between 16 and 18 may be tried and sentenced according to adult rules in case of serious crimes. The only restriction on the application of adult rules is the prohibition of lifelong sentences under 18 years (Article 77b). The decision about the transfer to under adult jurisdiction may be applied with regard to the seriousness of the offence, the personality of the offender or other circumstances.

4. The Dutch justice system may be defined as an ever-changing system that waves between rather punitive and rather welfare practices, depending on the actual policies which are influenced by international trends. This constantly changing nature of the Dutch system is not a new phenomenon, it should rather be understood as a historical tradition.

The today's juvenile justice system of the Netherlands is characterised by the strong intent of respecting individual rights of children and responding to their special needs.

5. The first *task* of this system is to analyse the child's behaviour and assess the risks of re-offending. In order to establish the right "diagnosis" on the child's future behaviour, the child protective services use computer-based risk analysis that determines the risk of repeated offending.[16] The second task of the system is to direct the child to the right

[16]Presentation of Barbara Barendrecht, Michelle van Wijngaarde and Laura van Rijn at the Child Protection Board & Youth Care Service in Rotterdam on 23 March 2015

mechanism that is able to eliminate the risks through education, treatment, intervention in the family, or in the most severe cases, deprivation of liberty.

6. The Netherlands does not have a special penal act on juvenile justice. Rules on juvenile offenders are incorporated to the Penal Code (*Wetboek van Strafrecht*). Child offenders under the MACR cannot be held responsible for criminal offences, however juveniles from the age of 12 can be held responsible for any crime listed in the Special Part of the Penal Code. The Dutch law does not differentiate between administrative offences and crimes: all actions which breach legal norms count as criminal acts, and are incorporated into the Penal Code. However, a distinction is made between major (*misdrijf*) and minor (*overtreding*) crimes within the Penal Code with significant effect on the punishments that are allowed to be imposed. For instance, in case of juvenile offenders, the judge is not allowed impose detention for those who committed minor offences.

The juvenile procedure is similar to the adult procedure, however it is more flexible and children are protected by a number of guarantees. There is an astonishing range of diversion (*buitengerechtelijke afdoening*) opportunities available for the police and the prosecutor. The most commonly used intervention against juveniles who committed minor offences is the Halt measure (*Het Alternatief*), the diversion measure on police-level. If this measure is not appropriate or the juvenile does not want to confess the crime, the case will be transferred to the prosecutor. The public prosecutor may take the following steps: (1) dismiss the case with or without laying down a condition[17], (2) settle the case through inflicting fine, community work of maximum 60 hours, or damage compensation, (3) divert the case, (4) initiate a civil process and/or a protection measure (Berger, 2012, p. 892; Defence for Children NL, 2014). If the available measures are not suitable, the case will be dealt with by the court, which typically means a single judge, and in exceptional cases a council of three judges. The judge is moderately bound by the law concerning to his procedural steps and decisions. General guarantees of *due process*, such as the primacy of closed trial, the right to parents and/or legal guardians to participate on the trial, and the compulsory legal representation of the child are non-revocable (Berger, 2012, p. 890). On the other hand, judges in the Dutch juvenile justice have relatively extensive discretionary power that evolved through historical development of the system, strengthening its welfare nature in within the justice-based framework.

Transition from one procedural scheme to another happens fairly flexibly. Both the transition of juveniles to the adult system, and the transition of young adults to the juvenile system are allowed. New types of procedural transitions, such as the smooth transition from juvenile justice to child welfare are in experimental phase (de Rechtspraak). The combined trial (*combi-zitting*) allows judges to transfer the case within

[17] Conditions may be for instance: following school curriculum, accomplishing a treatment programme, curfew, area ban, urinary controls or prohibitions of substance abuse, behavioural interventions (e.g. Multi-systemic Therapy, Functional Family Therapy, aggression training). Source: Presentation of Barbara Barendrecht, Michelle van Wijngaarde and Laura van Rijn at the Child Protection Board & Youth Care Service in Rotterdam on 23 March 2015

one trial from juvenile justice to child protection. An 8 months long research conducted at the Court of Arnhem on the experimental method shows, that there are important advantages of this process: (1) the judge has a broad view on the child's case and his personal history, which guarantees the application of the best measure available, (2) it helps to avoid 'double punishment' of the child, debates between judges on certain circumstances and contradictory measures, (3) it may prevent getting criminal record, (3) it requires less judicial attendance from the child and therefore it is child-friendly, (4) only one report is necessary on the personal circumstances of the child, (5) one procedure is less time-consuming for court and (6) it may be more understandable for parents than the role of two separate cases (de Rechtspraak, p. 47). However, despite the positive aspects of this measure, the research warns that this method of trial blends penal procedure and civil procedure in a dangerous extent, and this leads to a number of risks in the procedure. As for example the special deadlines and time frames compared to the opportunities in the general procedure may lead to lack of appropriate preparation both on the side of the court and the defence. The broad knowledge required from the judge and the prosecutor on the consequences of his or her decision in both the penal and child protection systems, and the need for the same quality of knowledge that should be guaranteed to every child in the Netherlands requires special investment in facilitating and implementing trainings. The rights of the child may be violated because there is lack of dissenting opinions in the procedure, which would ensure the quality of the decision. Accordingly, the position of the child might become weaker than in the general procedure, and there is a chance, that the application of penal measures will become more popular (de Rechtspraak, pp. 47-48). Although the future of the *combi-zitting* is not decided yet, the approach shows perfectly how the Dutch juvenile justice attempts to break the traditional chains of the justice system, and experiments with more flexible procedural solutions.

The material rules applicable to the juvenile offenders are summarised under Title VIII of the Penal Code (Special provisions for juvenile persons). These rules are exceptional compared to the adult penal law. Article 77h lists all possible punishments and measures that may be applied against juveniles:

1. main punishments:
   a. in case of criminal act: detention, community work[18] or fine.
   b. in case of minor crimes: community work or fine.
2. additional punishments:
   a. confiscation
   b. prohibition of driving motorised vehicles
3. measures:
   a. placement in a juvenile institution (*PIJ-maatregel*)
   b. measure concerning the behaviour of the juvenile
   c. prohibition of commercial purchase

[18] Community work may be (1) a work-punishment, which aims pay-back through providing free work or work that aims to restore the damage, (2) an educational punishment, which means following a learning project, (3) the combination of these two.

d. confiscation of goods gained unlawfully
e. compensation

As it shows in the introduction above, the Dutch system on controlling juvenile criminality has a two-faced construction, not only in terms of general philosophy but in its legal regulation as well. The juvenile justices system is based on justice traditions, where juvenile law is defined as an exceptional procedure, where principally more lenient rules are to be applied with regard to the young age of the offender. So far, this system does not show significant differences from the Hungarian or the Finnish regulation, which are also justice-oriented. The difference lies in the flexibility and the welfare approach of the system that approves the freedom of the police and the prosecutor (e.g. diversion and the wide range of alternatives), the trust in scientific evidence (see the methodologies applied in justice below), the multidisciplinary cooperation (e.g. ZSM-method, Council for Child Protection) and the freedom of the judge (e.g. combi-trials). In addition to this, the system is driven by the logic of "light where it can be, heavy where it should be" (*"Licht waar het kan, zaar waar het moet"*). This shows in the Early Help Programme, where the Council of Child Protection visits the juvenile during his arrest, and informs him and the family about the possibly forthcoming penal procedure. After talking with the child, the family and the school they advise the judge upon pre-trial detention or other suitable solution during the procedure (Defence for Children NL, 2014). In any case, the judge is bound by law to suspend measures (including pre-trial measures) of deprivation of liberty, unless there is no suitable alternative to this. According to the report of Defence for Children International the Netherlands (2014) on the alternatives to detention, "conditions can consist of, for example, a training- or community programme, prohibition to visit certain places or to meet certain people, intensive guidance by youth probation, an anti-drugs programme, a behavioural measure or mediation with the victim. The special rule of "suspension unless" brings the system of pre-trial detention closer to compliance with the standards of the Convention on the Rights of the Child."

In conclusion, the legal construction of the Dutch juvenile justice system guarantees welfare-based solutions to the majority of child delinquents and juveniles offenders who get involved into criminal offences. However, there is a minority group of offenders which suffers from the juvenile law that does not offer suitable punishments to children who committed grave offences, therefore they have to be transferred to adult courts and be placed in adult prisons and closed treatment institutions (CRC/C/NDL/CO/4, point 58).

7. The *key agencies* of the juvenile justice system in the Netherlands may be determined based on the number of children dealt with by the given agency and the key role in making decisions about the future of the child. Based on the number of children being treated by the agency, the most important organisation is the Bureau Halt. As mentioned above, the Halt measure is a diversion measure applied for minor cases, usually on police level. The informal decision about the child's diversion is made at the police, but it requires formal confirmation from the public prosecutor. The educational and restorative activities are organised by the local offices of the national Halt Foundation. With regard

to the decreasing number of juveniles in detention, the other key agency is the Child Protection Bureau (*Bureau Jeugdzorg*) the responsible authority for supervising juvenile offenders during their probation period, suspended sentence, community work, follow-up care after detention, as well as providing trainings and courses.
In terms of decision-making the key role is of the juvenile court. As mentioned under the description of the legal system, the judge has broad discretionary rights to determine not only the future of the child, but the nature of the procedure in which he is dealt with as well. This power is unique in comparison with other models. Although other justice-faced systems, such as Hungary and Finland, also emphasize the role and position of the judge in the procedure, the law-abided power in these jurisdictions is restricted to leading the trial, initiating further demonstration of evidence and delivering judgement based on strictly regulated penal provisions on the imposition of sanctions. In these jurisdictions the courts have narrow opportunities in deciding about the content of the measures.

8. In general terms the *key personnel* of the juvenile justice system are lawyers (and herein especially the judge and the public prosecutor) on the one hand, and care practitioners (psychologists, social workers, coaches, social-pedagogues, criminologists) on the other hand. However, the personnel that have actual contact with the child are also dependent on the justice trajectory based on the crime committed by him. In the first trajectory juveniles who committed minor crime are diverted in the earliest possible moment from the justice system, and treated by care practitioners (e.g. in Halt). However, juveniles who commit more severe offences meet almost exclusively police officers, lawyers and the staff of the detention facilities or probation workers as long as they are awaiting their sentence. Their treatment can only begin after the sentence – with a few exceptions, such as the Multidimensional Treatment Foster Care (see in Table 11). In the worst scenario juveniles charged for the most serious offences are tried according to adult laws, and they are placed in adult prison facilities or closed treatment institutions, however it is unlikely under the age of 23. Along this second trajectory it is doubtful that beyond the necessary security measures children also receive appropriate support and care.

9. Considering the number of children affected, it is obvious, that the most *typical instrument* of juvenile justice in the Netherlands is diversion*,* more precisely the Halt measure. According to Uit Beijerse (2013, p. 73), in 2012 17.686 children were registered in the Halt programme, among which 12.981 boys and 4.655 girls. This means that approximately one third of the child offenders are diverted to HAlt, if they confess during the police investigation and agree with the conditions of diversion (DCI NL, 2015). The content of the measure has changed significantly since its first implementation in the 1980's in Rotterdam. Originally, it aimed to deal with children committing minor crimes through retributive methods, such as washing off graffities. Nowadays Halt is an official, voluntary, police-level measure of at most 20 hours of retributive activity that concentrates on the awareness of the child on his acts and their consequences (Uit Beijerse, 2013, p. 75). Halt confronts minors with their behaviour and the consequences by making them apologise, compensate damage and accomplish specific learning

assignments. Since the revision of the measure in 2010 not only the child, but parents are also actively involved in the process. The advantage of Halt, unlike alternative measures offered by the prosecutor, is that the intervention is not registered in the national judicial documentation and has no (negative) consequences to the future of the minor. The measure is implemented by the Bureau Halt in the whole country. Typical offences, which result in Halt are vandalism, truancy or minor property offences, like shoplifting or illegal fireworks in the week before New Years' Eve (DCI NL, 2015).

The Netherlands is unquestionably one of those European countries which are likely to experiment with new alternatives to detention, proven by the broad variety of available alternatives that are designed for youth justice (Defence for Children NL, 2014). The Dutch Recognition System for Interventions lists 21 accepted programmes (from which some are slightly modified versions of the others, as for instance the *Parents of rebellious youth* programmes) at this moment. Information about these programmes is available on the website of the Dutch Youth Institute, that lists both the accepted and rejected programmes, as well as their status regarding effectiveness, namely if they are scientifically (1) well-underpinned, (2) effective according to the first indications, (3) effective according to good indications, (4) effective according to strong indications. In Table 11 these methodologies are summarised based on their target group, risk factors and methods they use. I marked the evaluation stage of the programme with stars, thus those with the weakest evidence are marked with one '*', while those with strong evidence on effectiveness received '****'. In the field of juvenile interventions most methodologies received one star.

Table 11. Intervention programmes accepted by the Dutch Recognition System for Interventions[19]

NAME	TARGET GROUP	DESCRIPTION
Training Aggression Control (TACt Group)*	**12-18** years old children who committed one or more criminal offence and who have higher IQ than 85	The method includes social skills training and learning of cognitive control. Juveniles learn how to act in a non-aggressive manner in problematic situations, they learn self-control, and participate in discussions that serve their moral development. It is based on the Washington State Aggression Replacement Training.
Suitable Aggression-regulation and Suitable Aggression-regulation Ambulant**	**16-21** years old youngsters living in closed youth care	The length of the training falls between 5 months and 1,5 years (the ambulant version lasts 6-24 months). Children learn self-control through motivation-techniques, mindfulness and cognitive behavioural therapy. It aims to prevent recidivism.
BASTA!*	**6-12** years old children who committed criminal offence	A 3-6 months (30 hours) long intervention that aims to reduce risks and prevent recidivism of children to offending. The programme uses the Early Assessment Risk List to identify potential risk factors and based on these, initiate intervention in the family, school or

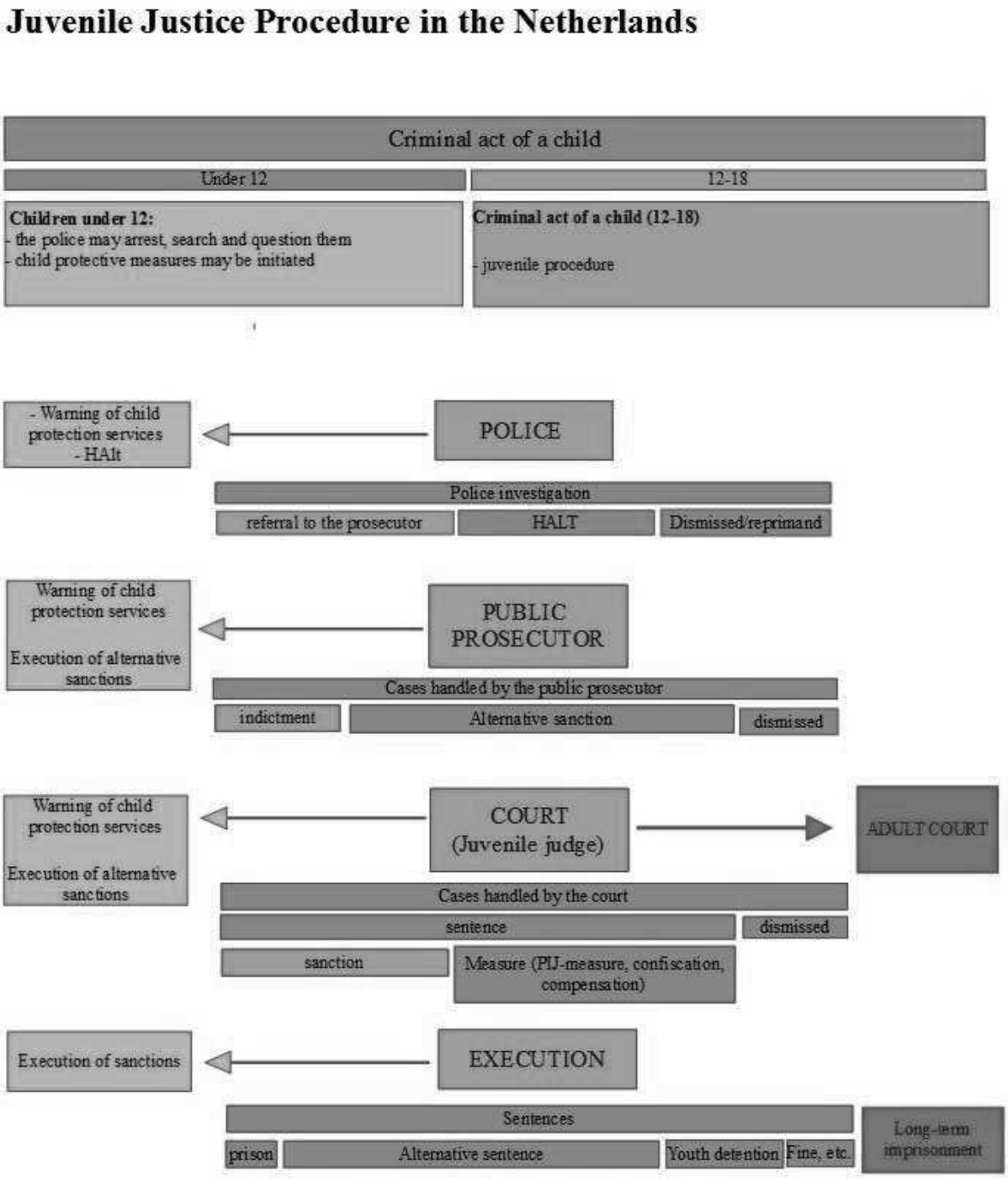
[19] The information is retrieved from http://www.nji.nl/nl/Databank/Databank-Effectieve-Jeugdinterventies/Erkende-interventies on 20 March 2016. Changes may have occurred in the list of acknowledged interventions between this date and the submission of the doctoral thesis.

		neighbourhood.
Brain4Use*	**12-23** years old juveniles and young people placed in a juvenile detention centre or in open facilities	The programme aims to prevent recidivism through reducing drug- and alcohol use by juveniles. It consists of cognitive-behavioural intervention for children, and awareness-raising of parents, who participate on awareness-raising sessions about the consequences of drug- and alcohol consumption.
EQUIP*	**12-18** years old children who show antisocial behaviour or commit crimes	EQUIP is a groups therapy for antisocial and delinquent juveniles. It aims to develop social skills, positive moral judgements and group-behaviour. It is the most widespread treatment method used in juvenile institutions, but also available for non-offenders, for instance in schools.[20]
In Control - LVB*	**12-21** years old youth between IQ 75-80, placed in juvenile detention, with aggression problems	Juvenile offenders learn how they can react to problem-situations in a non-aggressive but effective manner. They are trained to recognize the signs of impulsiveness in themselves, calm down, and work out the best solution in the given situation.
Learning from the offence*	**14-23** years old youth (violent offenders)	An individual cognitive-behavioural intervention to juvenile offenders who were sentenced to imprisonment because of violent offences. It consists of three phases: in the first phase children analyse the offences and their feelings about it, in the second phase the juvenile invents alternative strategies that could have happened, while in the third phase children get reminder lessons on using this technique to other situations.
Multidimensional Treatment Foster Care*	**12-18** years old children with behavioural problems	The child follows a 6-12 months long personal training (coaching) on behavioural management techniques together with a foster family. This measure is an alternative of pre-trial detention or imprisonment.
Multidimensional Family Therapy**	**12-19** years old multi-problem children	Children with behavioural and psychological problems participate in the treatment together with at least one of their parents. The programme aims to increase motivation to develop social skills, to improve communication within the family, improve parenting, and help the child to perform better at school.
Multi-Systemic Therapy****	**12-18** years old children with antisocial behaviour	The method aims to prevent children's placement to closed child care that may be the perspective unless they find a solution to their behavioural problems. During the 5 months long period a care worker is available for the family 24 hours a day, who develops a care plan and supports its implementation.
Parents of Rebellious youth*	**Parents** of 8-16 years old children with antisocial behaviour	Within this programme-framework parents can get help through four methods: (1) parenting courses, (2) parenting workshops, (3) parenting trainings, (3) parenting clubs that discuss typical problems. The

[20] In an institutional visit in one of the juvenile facilities in the Netherlands my interviewee pointed out the limits of effectiveness of this programme in juvenile justice. The implementation of the project is done by the general staff, thus the same people who lock the doors every night and who eventually have to discipline the children. Although they are those who know the children the best, this role and the authority they represent is not completely reconcilable with a treatment method where honesty and openness is required from children.

		programmes aim to prevent recidivism or future offending through improving parenting techniques.
Parenthood with love and limits*	**Families** of children of 12-18 years	The programme aims to improve family relations and effectiveness of parenting through weekly discussions with a care worker.
Out of the circle*	Juvenile (sexual) offenders	The programme aims to prevent recidivism among juveniles who were sentenced to treatment in a closed facility because of child abuse. This is an at least 23 weeks long clinical cognitive treatment, that helps offenders to recognise the risk-situations and invent alternatives to their reactions.
Relational Family Therapy*	**Families** of children of 11-18 years	The programme aims to improve family relations and effectiveness of parenting through weekly discussions with a care worker.
Respect Limits*	Juvenile sexual offenders	An individual behavioural intervention to sexual offenders that can be ordered both by judges and prosecutors. It focuses on the understanding of the reasons and circumstances that lead to the crime, and improving skills to prevent further offending.
So Cool*	**12-18** years old children with behavioural problems and low IQ	It is a social skills training of 40 or 50 sessions that aims to involve the family into the learning process.
Tools4U**	**12-18** years of juvenile offenders	This is a methodology for educational measure, aiming to prevent (re-)offending. It combines cognitive and behavioural therapy.

Figure 4. Juvenile justice procedure in the Netherlands



IV.2. Welfare model

Model Country: Belgium

1. Traditionally the Belgian penal system was based on the French penal law from about the middle of the 19th century (Put & Walrave, 2006). Youth Courts were established in 1908, and the first act on child protection came into force in 1912. In line with the European trend of introducing educational rather than punitive measures for depraved children, this law established a special judicial procedure supported by patronage committees in Belgium, and the possibility of supervising families at risk of further depravation. In 1937, when Belgium created the new concept of welfare state, juvenile justice became part of the social welfare, pedagogy and health care, and the social concept of delinquency vanished in the individualized approach on deviance. As Put and Walrave (2006, p. 133) points it out, this extreme of welfare approach lead to a system, where the principles of the classical school of penal law lost their role in establishing criminal responsibility (nullum crimen sine lege) and determining consequences based on culpability (nulla poena sine lege). The goal of repression had been replaced by education and reformation as the main subject matters of interventions. This system had not been reformed in essence by the Youth Protection Act of 1965, although the regulation became more transparent. Youth Courts had been established in place of Children's Courts, that were entitled to deal with civil cases of both 'endangered' and delinquent minors, but the punishment of children younger than 18 was still not possible on penal basis. The exception from the welfare-based treatment was established by the transfer rule for the "hard core" juveniles above 16 years of age (Christiaens & Nuytiens, 2009). Placement in closed (private and state-run) facilities in order to observe of educate children was a protective measure. According to the critical notes of Put and Walrave (2006) this judicial system was uncontrollable, and the effectiveness of educational measures was highly questionable.

   The comment of Put and Walrave on the system established in 1965 suggests that fundamental changes were necessary to restore the effective operation of juvenile justice in Belgium. In the reality, the transformation of Belgium into a federal state of three Communities (French, Dutch and German) from 1970 to 1988 provided these changes from the very fundaments of the legal system (Van Dijk, Dumortier & Eliaerts, 2008, p. 187). Although the leading philosophy of the system as determined by the rules and structure of the Youth Protection Act of 1965 has not been amended, the generality of one particular philosophy in the Belgian juvenile justice system turned somewhat equivocal after the distribution of tasks in its operation. The right to define delinquent behaviour and the organisation of Youth Court remained a federal matter, while the communities became responsible for the execution of youth measures (Put & Walrave, 2006; Van Dijk, Dumortier & Eliaerts, 2008). After multiple reforms, the division of task looks as follows since 2014: the Federal State is competent to determine (1) criminal offences (through the Penal Code of Belgium) (2) the organisation of the juvenile jurisdictions, (3) the territorial competence of juvenile jurisdictions (4) the procedure before the juvenile jurisdictions, (5) the regulation on deprivation of liberty, (6) the

regulation on the minors' hearings, and (7) the execution of sentences imposed to minors who committed an act deemed to constitute an offence and that were transferred to an adult court. Whereas the followings belong to the Communities' competency: (1) the measure that a Youth Court judge might apply (including their nature and purpose, the criteria and conditions, the duration, the extension, the revision, the measures' hierarchy, the specific motivations, the organisation of public and private services to carry out the research and implement the measures); (2) the rules to transfer a minor to an adult court, providing and organising its conditions and effects; (3) the rules for sentencing to detention, (4) the administration of detention centres following procedures are yet to be determined (Defence for Children BE, 2014).

The transition did not affect the ideological basis of the Belgian juvenile justice as much as the punitive discourse on youth delinquency did in the 1990's. Just desert, in contrary to rehabilitative ideas, became a matter of public debates and public safety became a legitimised goal of judicial intervention, as one of the main factors of consideration for the youth judge (Van Dijk, Dumortier & Eliaerts, 2008). The last comprehensive amendment in 2006 raised the goals of sanctioning, protection of the society and the restoration of the harms caused by the offence as new goals next to protection and support of the child (Gilbert & Mahieu, 2012, p. 15). However, even despite the growing significance of the protection of the society the Belgian system preserved its welfare foundations and overall welfare-approach. It is still characterized by strong determinist idea on children´s deviances, where the dependency of the child counts over the negative circumstances. The role of the state is paternalistic and protectionalist, focusing rather on needs than deeds of the child. Education, treatment and generally considered social support are the main instruments of the system (Cavadino & Dignan, 2006).

2. MACR in Belgium is 18 years, which means that penal courts for criminal offences may charge only people who have reached legal adulthood. This approach on the client behaviour suggests that the Belgian system does not recognise children as mature actors who are aware of the consequences of their actions (Defence for Children BE, 2014). Delinquent behaviour of children is perceived as pathological and determined primarily by environmental disadvantages. The goal in respect of the client is therefore education of children and exercising positive influence on failing families and broad environment. Although the welfare-based approach set out in rules and the legal build-up implies consistent leniency and focus on the child, this approach on the client's behaviour is far from general. The most obviously inconsistent rule in this respect is the transfer rule that, similarly to the Dutch view on client behaviour, cuts off serious juvenile offenders from the welfare system and creates bifurcation in the approach: the average juvenile offender is "just" a vulnerable child, while serious offenders are rather perceived as adults. The disparity of practice in the French-speaking and Dutch-speaking Communities only escalates the inconsistency in this respect (Christiaens & Nuytiens, 2009).

In practice there are also concerns about the fair and equal distribution of the available measures between ethnic groups, especially because Belgium made a declaration on Article 2 on the non-discrimination principle of the UNCRC, which "restricts the

enjoyment by non-Belgian children of the rights contained in the Convention, and on article 40 on the review of penal decisions by higher judicial body." (CRC/C/BEL/CO/3-4, 2010). According to Christiaens and Nuytiens (2009, p. 134) children with Moroccan or Roma background and asylum-seekers are transferred in a disproportionately high number to adult courts (Moroccan children give 44,7% while Roma and asylum-seekers give the 22% of the total transfers), because the Belgian child protection system cannot provide with effective measures for this group.

3. The *main purpose of intervention*, as defined by the law, is to prevent (further) delinquency in order to ensure public safety. While in the other countries juvenile justice is strictly determined as a special area of penal law, such as in the Netherlands, Hungary and Finland, the Belgian law prefers to approach the cases of delinquent children as a special area of child protection. This approach is highlighted by the Youth Protection Act, that expressly refers to children who "committed an act that is defined as criminal offence" as children who fall under child protection laws and not penal laws.[21] However, there are two aspects, that establish the connection between child protective an penal rules. Firstly, the fact that delinquent children represent a separate protection category shows that this area is not entirely independent from the (adult) penal provisions which define actual criminal acts. Secondly, Belgium, similarly to the Netherlands allows the transfer of children who have reached 16 years to adult courts to be charged according to the general penal law and be placed eventually in adult detention (see this system in details in Chapter VI).

4. In legal terms every measure applied against children (with the exception of those imposed expressly under adult law) are child protection measures serving preventive and protective goals. Based on the last amendment of the YPA in 2006, prevention of delinquency is of essential importance in order to warrant the safety of the society in a long term (Section 1 of the Preamble of YPA). This extends the objectives of the system to serve the society's interests as compared to serving the interests of the individual, and sets safety as primary goal. Furthermore the objectives set in the law suggest that public order is of such high importance that it may compete with best interest of the child: granting the rights of the child as according to the UNCRC is the last among the goals set in the Preamble.

5. The *task* of the system is to intervene in order to eliminate the risk in the child's life (protection goal) and well as the potential risk to the society (to warrant the safety of the society). The intervention may be disposed within the strictly defined Youth Justice procedure, or may it may be disposed as a measure of 'social youth prevention' (Walgrave, 2002). While the first is explained below in detail, the second may be described as part of the general welfare work that aims to support vulnerable families and

[21] The title of the Act In Dutch is: "Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade"

children through providing standard services to prevent the delinquency of children as well. For example, the Belgian Ministry of Social Integration developed a programme for youngsters under 25 years without income that is based on writing "integration contracts", while other ministries set up projects for schools targeting students with motivation and behavioural problems and children addicted to drugs and alcohol (Van Dijk et al., 2008, p. 192). Developing preventive strategies is in the legislative power of the Communities, and they usually do not focus specifically on juvenile offending but on phenomena that are believed to be risk factors of juvenile offending, such as domestic violence, broken families, proper housing, social exclusion, etc.

In the Youth Justice system there are also a number of intervention programmes available, focusing on behavioural problems related to the crime as well as the social "bonds" of the child (see under point 9 of this subchapter). However Van Dijk and colleagues (2008, p.214) reported, that the lack of appropriate interventions in closed facilities with regard to the lack of skilled personnel and the rigidity in the regimes hinders individual treatment.

6. Despite the reforms that affected youth justice since the 1960's, the Youth Protection Act of 1965 is still in force in Belgium. The law orders the establishment of a Youth Protection Committee in each region (Section 1 of YPA). The goal of this Committee is to intervene whenever the health, safety or moral integrity of the child is in danger in the given environment, with regard to his behaviour or the manner of his upbringing (Section 1 of YPA).

In theory the police do not have the right drop the charges or apply diversion, it is the right of the public prosecutor. However, according to van Dijk and colleagues (2008 p. 193), the police often apply unofficial warnings and provisional registration in practice, which allow them to unofficially 'suspend' reporting to the public prosecutor until there is definite need for the official justice reaction. This unofficial 'procedure' may even include the condition of participation in an educational training, traffic course or restoring the damages. If the police decide to take the case in front of the prosecutor, he has the following options: (1) dismissing the case, (2) sending the juvenile to Youth Services because of considering the offence as a symptom of underlying personal, social orfamilial problems, or (3) assessing a judicial measure necessary, and referring the case to the juvenile judge, (4) warning the child and/or his family, (5) proposing mediation to the offender. Other forms of diversion are only allowed by law on judicial level, but informal diversion by the prosecutor is tolerated despite that it implies the possibility of the violation of the child's rights (Van Dijk, Dumortier & Eliaerts, 2008).

According to Article 36 of the YPA, the Youth Court deals (among others) with those cases, which are referred to her by the public prosecutor with regard to a criminal offence committed by a child. The Youth Court in Brussels may order the 'care, preservation and education' of those persons who were brought before her (Section 37(1) of the YPA). In her decisions the court has to take the following factors into consideration: (1) the personality and the maturity of the child, (2) the living environment of the child, (3) the seriousness of the offence committed, and the damage caused and the consequences for

the victim, (4) the previous measures taken earlier against the child (practically re-offending of the child), (5) the safety of the child and (6) the public safety.
The Youth Court in Brussels may apply the following measures, even cumulatively (Article 37(2) of the YPA):

1. reprimand (with the exception of those who have reached 18 years), and reminding the caretakers to fulfil their task better;
2. supervision by the social services;
3. intensive educative supervision with individualised restrictions, supervised by a relevant professional appointed according to the legislation of the Communities;
4. community work of at most 150 hours;
5. ambulant treatment by a psychologist, psychiatrist, sexual therapist or other experts in the field of alcohol and- drugs addiction;
6. supervision by a legal person who commits to support him in realising positive achievements, whether it is education, training, or other organised activity;
7. supervision by a trusted person or placement in an institution for the purpose of education and treatment;
8. placement in an (open or closed) child protective institution;
9. placement in a hospital;
10. replacement to a residential treatment institution for alcohol- and drug-abuse or other forms of addiction;
11. replacement to whether an open or a closed psychiatric treatment institution.

In cases of children under 12 only the first three measures may be applied. In any case the preference should be given to the restorative measures. Based on the YPA the child shall be maintained in the original living environment before considering institutional placement. Deprivation of liberty in closed facilities shall be the measure of last resort, and it may last only until they reach 20 years of age. The maximum length of the measure has to be established, and it may only be exceeded in exceptional cases, as for instance in case of persistent misconduct of the child, or if his behaviour is dangerous to himself or others (Defence for Children BE, 2014, p. 21). Life imprisonment of a person under 18 years is prohibited by the Penal Code since 2006 (Section 12 of YPA).

Van Dijk and colleagues (2008, p. 192) describe Belgian preventive strategies as “highly chaotic”, without consensus of used concepts or theoretical perspective, with gaps and overlaps between systematic elements. Despite all inconsistencies in the system Belgium was evaluated as a positive example among the Member States of the European Union and as a country that has a closely comprehensive policy in the Summary of the European Commission (2014). There are multiple comprehensive legal solutions highlighted in the report, which are considered to be not only welfare-oriented but also child-friendly in light of the international requirements, such as the high age of criminal responsibility, specialized institutions, where it is mandatory for the staff to be trained for problematic children, the multidisciplinary approach, protection and information provided for the children already during the first contact with the police, free legal aid, the protection of the privacy of children and the restricted access to criminal records.

7. The *key agencies* of the Belgian system are the social services, welfare agencies for family and care, and residential institutions for care and education. According to Put and colleagues (2012) the network of these actors is a striking example of what Garland called 'penal welfare complex'. It is "characterized by close interaction between judicial institutions and a nexus of social workers, specialized educators, pedagogues, psychologists and psychiatrists", that has developed and preserves "its own traditions, conventions, customs, interests and powers" (Put, Vanfraechem & Walgrave, 2012, p. 85).

8. Following from the previous point, the *key personnel* of the Belgian juvenile justice system are the social workers, therapists, pedagogues, and specialised personnel of law enforcement and justice. Beyond the professionals in the public sector the role of practitioners of NGO's is emerging in the area of executing restorative measures, such as mediation (Put, Vanfraechem & Walgrave, 2012).

9. The international movement of restorative justice paradigm had a significant influence on the Belgian juvenile justice system in the past decades. The main goal of the judicial intervention became restoring the harm caused to the victim, compared to which retributive and educational goals have subsidiary role (Van Dijk, Dumortier & Eliaerts, 2008 p. 196). Since 2006 judges have to consider imposing a restorative measure, meaning victim-offender mediation and/or family conferencing before considering the application of any other measure (Put, Vanfraechem & Walgrave, 2012). Despite the legal-theoretical efforts research shows that the actual primacy of restorative methods is not yet typical in the sentencing practice of Belgian Youth Courts (Put, Vanfraechem & Walgrave, 2012; D'hondt & Péters, 2016, pp. 178-179). The implementation of mediation has to face both legal and practical obstacles. In terms of legal obstacles the lack of elaborated legal rules, and following from this, the lack of legal safeguards seems to be an important problem. In their analysis about mediation Van Dijk and colleagues (2008, p. 200) point out, that neither is it clear for what kind of crimes mediation can or should be used, nor the procedural consequences of the influence of a successful or unsuccessful mediation are regulated. This leads to enormous differences between the practise of the Communities: while one part of the country uses mediation as an alternative procedure where the case will be dropped is a repair-agreement is established, in the other part of the country juveniles may be prosecuted despite a successful mediation process. The nature of the underlying (child protection) procedure also implies a legal-theoretical conflict with between the role of the acknowledgement of committing the crime in the restorative procedure and the procedure where no 'guilt' shall be established. Finally, judges may not opt for applying restorative methods, because of a misunderstanding about the strategic position of mediation in the process, or and the lack of knowledge about its content (Put, Vanfraechem & Walgrave, 2012).

   There is a variety of educational interventions available in the Belgian child protection that aim to eliminate different risk factors through applying restorative and educational techniques. The intervention programmes aim to inform or sensitise children (e.g. about drugs, other addictions, vandalism), to teach various skills aiming to support social

integration (e.g. social or labour skills), or to provide better understanding on the delinquent behaviour and its consequences to both offender and the victim. Table 12 gives insight to the available interventions to delinquents within the framework of the Belgian child protection system. Some of these interventions compound elements from cognitive therapies, behavioural trainings and restorative practices, highlighting the coexistence of traditional education measures and restorative methodologies.

Table 12. Examples to educational and restorative interventions in Belgium

INTERVENTION	TARGET GROUP	DESCRIPTION
Social skills training	children who lack certain skills to be self-reliant and assertive individuals	An individual training that aims at increasing social competence. The program teaches the minors to gain insight in their shortcomings and to learn skills to deal with these.
The programme "coping with drugs	problematic drug user children	This group training provides the opportunity for juveniles to discuss advantages and disadvantages of drug use, and informs them about the possible consequences.
The programme "coping with aggression"	children who experience problems with physical and psychic aggression	Juveniles examine the causes and consequences of frustration-aggression are being and develop alternative behaviours explored.
The programme "victim in-sight"	children who poorly empathise with the victim and/or have little insight in the damages and the consequences of their actions	The aim of the programme is to increase the knowledge of the child about the damages he causes and improve his ability to empathise with the victim. The restorative goal of the programme is that the offender takes the responsibility for his actions, and as its evidence, he restores the damage.
The Context-project	children who have lost their link (relation) with their environment and society at large	This is a long-term project (six months to one year), which intends to restore social bonds of the child (from family relations to school, work and community) and provide support in building a good relation to himself.
Family Group Conference (FGC)	children who have committed a serious offence or a series of minor offences	A project designed at the Catholic University of Leuven based on other family conferencing methodologies, which provides with restorative alternatives to child offenders. The method involves the child and his family (together with their own support system), the police and the lawyer of the child. The conference is lead by a mediator, who supports the parties in reaching the "declaration of intent", that should be validated by the juvenile judge.
Youth at Risk	child delinquents with different types of problems in their lives	The method is used in the Dutch-speaking Community to support better integration of delinquent youngsters into the community. The programme consists of a motivation phase, a training phase and a realisation phase. First the child finds the goals he would like to achieve and gets engaged in acting towards them. This is followed by a two-weeks-long intensive life-skills

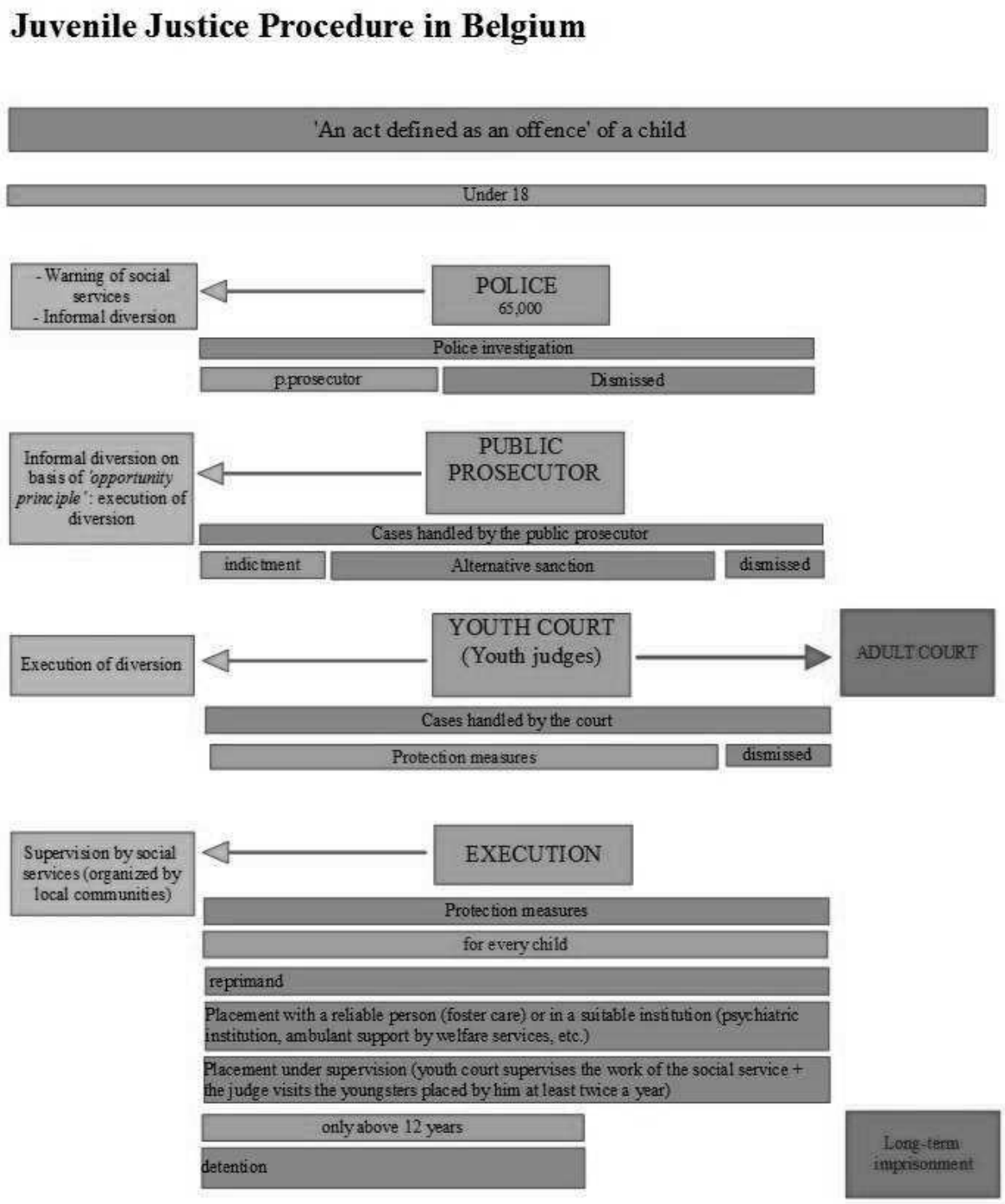
		training, which aims to facilitate the realisation process. Finally during a 9 months long realisation period the child works on reaching his goals with the help of a personal coach.

Source: Van Dijk, Dumortier & Eliaerts, 2008 p. 207-210, http://www.yarvlaanderen.be

The so-called "written project proposed by the youngster" is one of the innovative restorative techniques used in Belgium, that can focus on different restorative goals, such as restoring the damage caused by the offence, apologising, following treatment, etc. (Dunkel, Pruin & Grzywa, 2010, pp 1672-1673). The innovation seems to convince neither the judges nor the scientists. According to the latest report of the National Commission on the Rights of the Child (NCRC)[22] judges decide about letting the child to make a "written project" in only 3% of the sentences (D'hondt & Péters, 2016, pp. 178-179).

[22] The National Commission on the Rights of the Child is an official human rights body where about 90 governmental and non-governmental organisations meet to discuss and find solutions for the remaining problems regarding the realisation of children's rights in Belgium. The body was established in 2007, and its main task is to monitor the implementation of the concluding observations of the Committee on the Rights of the Child and to report about children's Rights issues in Belgium.

Figure 5. Juvenile justice procedure in Belgium



IV.3. Corporatist model

Model Countries: England and Wales

1. England and Wales represent one jurisdiction within the United Kingdom that differs in many aspects from the jurisdictions of Northern Ireland and Scotland. In this subchapter I am going to focus on the main features of policies and laws of England and Wales (hereinafter: England) in the field of youth justice, while in the following subchapter I will introduce the Scottish youth justice. The distinction between the countries of the United Kingdom is necessary, because they represent a genuinely different approach on juvenile delinquency and offending, and therefore their systems of institutional reactions belong to different models as well. While the youth justice system of England is known as an example for the corporatist model, Scotland established an extraordinary, participatory model.

The *general philosophy* of the English system waives between welfare and justice paradigm ever since the foundation stones of the contemporary youth justice were laid down in 1908.[23] Two important acts were adopted this year: the Children Act and the Prevention of the Crime Act (Fox, 1952). The Children Act established the first juvenile courts in England, and took steps toward diverting children from prisons to alternative institutions, which focused on their education rather than repression. Accordingly, different age limits were to be applied for different institutional settings: children could be placed in a reformatory or in an industrial school from the age of 12 (up to 16 and 14), while imprisonment was only allowed from 14 years, however restricted to only the "last resort". For "juvenile-adults" between 16 and 20 years the Borstal institutions had been opened, based on the Prevention of Crime Act. As a replacement of the institutional treatment the newly established probation offered a non-institutional alternative. By this time the MACR was 7 years (Fox, 1952, p. 334).

The laws had been revised multiple times during the past century. In 1933 the system had been changed towards a rather welfare direction (Dignan, 2010). MACR was raised to 8, and children between 14 and 17 were called 'young persons'. Institutional treatment was only possible whether in closed institutions (for children between 10 and 17 years) or in borstals (for children of 16-21). In 1948 the imprisonment had been prohibited under the age of 15, although in exceptional cases it was still allowed, and punitive measures had been implemented to the law, such as "short sharp shock" for those children who only "laugh at probation". The latter provision was not considered to be a success, in contrary, the School of Social Sciences of Liverpool University concluded in 1944 that the punitive detention as a form of treatment is rather disappointing (Fox, 1952, p. 340).

[23] The literature on juvenile justice systems of the UK often refers to the very same system as "youth justice" instead of "juvenile justice". In practice systems of the continental Europe and the UK are indeed very similarly established and follow a similar idea, however there are important conceptual and most importantly legislative differences between them. While in the continental concept juvenile justice is an exclusive system established to deal with child offenders above MACR (even though usually not established in a separate law), using justice measures, in the UK the system that deals with child offenders is more diverse and complex. Therefore I find it reasonable to use the expression of "youth justice" instead of juvenile justice in case of England and Scotland.

However the disappointment was not considered to be the sign of the failure in the concept, but the failure of the institutional setting, therefore later special detention centres were appointed for short-term imprisonment of minor criminals. The Children and Young Persons Act of 1963 amended the purpose of the law, and with this, traced out the new direction of methodologies as well. According to the new definition, the Act was only applicable for children in need of care or protection as the welfare ideal would suggest, but also of control (Schless, 1964). In the 1960's a draft amendment to the Children and Young Persons Act aimed to reinstate the welfare-based approach to youth justice. Only parts of this amendment came into force, therefore comprehensive changes aiming to shift the system towards welfare never took place (Dignan, 2010).

Between the mid 1980's and the mid 1990's the power to bring forth systematic shifts was in the hands of youth justice practitioners, despite the regular attempts of the Parliament to affect various institutions of the system (Dignan, 2010). The philosophy of the practitioners was based on the idea of "minimum-intervention" and avoiding institutionalisation of children, which led to the extensive application of diversion on police and prosecution level. From the mid 1990's, as a result of the shift towards the political right and the growing criminality serious critics were raised against the strategies of the English justice system. The system and in particular its certain punitive elements were claimed to be inhumane, unjust and ineffective in repressing crime (Lévay, 2000). In addition to the critics, signs of "moral panic" saw through the 1990's, which was believed to originate from the tragic events of the Bulger-case, in which two 10 year old boys were convicted because of torturing and murdering the toddler James Bulger (see case and its impact on the legal regulation in Chapter VI). The case raised long-standing concerns again about the right response to child offending. Within a year after the case the Public Order Act of 1994 took a stand against welfare ideas, and extended the possibility of long-term detention for 10-13 year olds and introduced Secure Training Order for children of 12-14 (Graham & Moore, 2006, p. 65). The legislation supporting control in the field of youth justice continued with the Crime and Disorder Act in 1998. This shifted the focus of control from the field of repressive juvenile sanctions towards the field of the social measures (Muncie & Goldson, 2006). Following from the new "preventive" idea that unified justice and welfare in a common goal a rather pragmatic development of juvenile justice began. A number of restorative intervention projects have been piloted, and YOT's have been established in 1999 to represent the multi-agency approach on the prevention of juvenile offending, and to provide community-based and restorative solutions (Graham & Moore, 2006, p. 65; Muncie & Goldson, 2006). The philosophy of the system shifted towards being more interventionist and correctionalist than it was, and aimed to control multiple target groups in the name of prevention. Dignan (2010, p. 360) argues, that the system established by the legislative changes between the mid 1990's and the mid 2000's may even be called "The New Youth Justice". This phenomenon did not change fundamentally with the recent legislation either. The current system is focusing of restoration for victims, and proper reintegration for delinquents. It is characterized by efforts taken to empower parties, and growing importance of institutional co-operation and partnership both in terms on within-

governmental and civil-governmental collaborations. This system may be distinguished from other models along state measures towards subsidiarity (Pruin, 2010).

2. The *understanding of client behaviour* in England is based on the result of longitudinal research that describes juvenile offending as an act that proves lack of proper socialisation. Research suggests that early intervention is an important tool of preventing adult crime, and to improve the socialisation of children and adolescents. The interpretation of these results and the social policies following from this interpretation are quite controversial in England. On the one hand, as a result of developmental research a wide range of intervention projects have been introduced in the past decades that targeted the various stages of children's development (such as Sure Start, Youth Inclusion and Support Panel, On Track), and aimed to prevent later criminality through intervening to improve given skills and living circumstances to eliminate risk (Graham & Moore, 2006, p. 69). A number of these projects provide promising outcome.

   On the other hand, although the goal of the intervention projects is clearly to improve the quality of the life of children at (child protective) risk, the actual policies are not always appropriate to achieve this goal. Dignan (2010) notes that programmes address only a narrow range of risk factors and policies do not intend to work on wide social issues, such as poverty, exclusion and inappropriate education. According to Rodger (2008, pp. 48- 51) older adolescents of 16-18 who left formal education without qualifications (NEET, that stands for not in education, employment or training) are a particularly vulnerable target group of social as well as penal policies. Their lack of perspective and "social capital" is a risk to engagement in crime and antisocial behaviour, such as drug use as well as early child-birth. Rodger notes, that although observation on increased risks in case of school drop-out may be valid, not all people in the population identified as NEET are at the same risk of offending. Nevertheless, social policy in England perceives NEET as a homogenous group, and the available measures target everybody who leaves education at this stage of life. Programmes that are established to support young people to stay in the education or find employment are rather coercive, since rejection of participation is perceived as antisocial behaviour which may lead to criminal charges. According to Rodger (2008, p. 51) in this context "the welfare system is considered to provide only perverse incentives to behave badly, the choices will be between work or subjection to social surveillance." Furthermore, coercive intervention is often targeting the population that is labelled as "underclass", and creates a view in social policies that blames parents for the behaviour of their children.

   Serious juvenile offenders are, similarly to the Dutch and Belgian systems, considered to be adults rather than children. Although the number of juveniles tried in front of the Crown Court (adult jurisdiction) shows decreasing tendency (Dignan, 2010, p. 384), the understanding on juvenile crime that perceives particularly severe acts as adult crimes regardless to the age of the offenders is still a matter of concern in the English youth justice system.

3. The *overall goal of the intervention* is to retain the offender from committing crimes and continuing behavioural patterns which are labelled as criminal or antisocial. An

overall purpose of intervention is hard to find, because it depends very much on the policy-area and target group. Therefore the English system may be defined as eclectic in its purpose. There is a tendency of growing importance given to processing the criminal act, responding to victim's needs, restoring the harm, and eliminating the tension caused by the offence within the community. There are a number of court orders and diversion-opportunities available that focus on restorative goals, next to the traditional tools of the youth justice system. Beyond these, for those who commit the rather serious offences penalisation appears to be the clear approach of intervention. The latter was noticeable in the numbers of juvenile imprisonment between 1993 and 2002, when the imprisonment rates tripled (Muncie & Goldson, 2006).

4. The *objective* of the system is risk management. According to Muncie and Goldson (2006) the "obsession with identifying risk" follows from the results of the Cambridge study (see in Chapter II), which have been combined with the "law and order" ideal at the mid 1990's. This combination had led to the idea, that human behaviour is fairly predictable, and if de system is able to recognise the potential "risk factors" (in combination with "protective factors") criminal and antisocial behaviour is preventable. Risk factors in this case are understood on individual level, and approached by coercive and restrictive intervention aiming to alter behavioural patterns rather than focusing on the support of the child and the environment. There is increased attention given to what children might do instead of what they have actually done (Muncie & Goldson, 2006, p. 41).

This approach may lead to rather negative consequences for juvenile offenders. As a result of risk assessment, formal need have been created to intervention, that happens fairly automatically even in the diversionary regime (Dignan, 2010, p. 395). This can lead to unnecessary intervention even in the most trivial cases and labelling of youngsters not only as offenders, but also potential offenders, sub-criminals, antisocials, etc. Interventions as a result of assessment accordingly become institutions of public shaming (Muncie & Goldson, 2006).

5. The *tasks* of the system are to identify risk in practice and eliminate it by means of intervention. Identifying risk became a crucial element of the youth justice system in England in the past decades. The assessment is primarily done by youth offending teams. The approach resembles the Dutch system. Simlarly to the Netherlands, risk of committing another offence in the future is determined via a practitioner-administered questionnaire since 2000. The tool used in England and Wales is called 'Asset'. The basic idea of the tool is the following:

> "The Asset tool measures/assesses risk factors in young people's lives across 12 'dynamic' (amenable to change) risk (factor) domains and one 'static' (unchangeable) risk domain, along with four additional risk-related domains, thus activating a staged process of reductionism that moves understandings of young people's lives incrementally further away from their own interpretations, understandings and lived realities (see France, 2008; MacDonald, 2007). The assessment of risks in each

dynamic (psychosocial) domain is further reduced and removed/distanced by requiring (adult) practitioners to identify whether each of a series of risk factors are present (by using dichotomous yes/no responses) and then provide a summative, aggregated rating for each domain of 'the extent to which the young person's lifestyle is associated with the likelihood of further offending (0 = not associated, 4 = very strongly associated)'. The final step is to require practitioners (with limited input from the young person) to total the dynamic risk domain scores across the assessment instrument (giving a possible score of 48 from 12 domains, each rated 0–4) and to add these to a total score for the static risk domain (possible score 16: each element rated 0–4), providing each young person with a risk profile score up to 64. This score is taken to signal the young person's likelihood of reoffending: low (0–14), medium (15–32) and high (33+)" (Case and Haines, 2015, p. 104).

The Asset has been expanded by the 'Scaled Approach' assessment and intervention tool in November 2009, which required tailoring interventions to the results of the assessment scores. Scaled Approach, as according to the critis, automatised the intervention applied for juvenile offenders and failed to target the individual characteristics and needs of the child as well as the crime that has been committed (Case & Haines, 2015).

After the revision of the system 'AssetPlus' was implemented in 2014. This is a holistic end-to-end assessment tool that allows professionals to follow the development of the child throughout the youth justice system. The assessment consists of three main parts: (1) information gathering and description, (2) explanations and conclusions, (3) pathways and planning. While the first section contains information about the child's circumstances and behaviour, the second section evaluates the collected data and assesses risk of reoffending as well as self-harm. As opposed to Asset, AssetPlus uses narrative analysis. When planning the intervention the tool uses Scaled Approach and five guiding goals of the outcome: repairing the harm, avoiding reoffending, not hurting others, give goals and life opportunities, ensure safety and well-being. According to Case and Haines (2015) this tool challenges the old 'Asset' method by providing a holistic, sensitive and more positive approach to assessment and intervention. It emphasizes participation of the child when requiring self-assessment and promotes strengths that can lead to desistance. However, it still seems problematic that AssetPlus is a „technique without an overarching purpose or philosophy" (Case & Haines, 2015, p. 112).

6. The particularity of the *legal construction* of the English juvenile justice system among European countries with civil law systems lies primarily in the fact that as a common law country England does not have a Penal Code. Rules concerning the penal procedure of juveniles and the work of relevant agencies and institutions are regulated in Acts of the Parlament (Dignan, 2010). The most important Acts that establish the youth justice system in England are the following:
    - Children and Young Persons Act 1933;
    - Children Act 1989;
    - Police and Criminal Evidence Act 1984;

- Secure Training Centre Rule 1998;
- Young Offender Institution Rules 2000;
- Power of Criminal Courts (Sentencing) Act 2000;
- Children (Leaving Care) Act 2000;
- Criminal Justice Act 2003;
- Children Act 2004;
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (The Howard League, 2014).

In addition to this list the sentencing guidelines and prison service rules contain important rules about youth justice, and the Anti-social Behaviour, Crime and Policing Act 2014 (ABCPA) regulates the procedure for antisocial behaviour and minor criminal offences.

England holds one of the lowest MACR among the European countries: according to Section 50 of the Children and Young Persons Act 1933 "it shall be conclusively presumed that no child under the age of ten years can be guilty of any offence". Only the general MACR is Scotland is set out lower (8 years), but in Scotland children who have not reached 12 years yet may not be subject of procedures within the youth justice system.

In England police practices the "traditional" role of diversion by means of informal and formal warnings (the latter is called "reprimand", while earlier it was called "caution"). As a result of the revision of the originally implemented "final warning scheme" in 2012 it is allowed to the police to repeat warnings multiple times instead of only once. Reprimands are registered, and if a further minor offence is committed by the child, the police are obliged to refer the case to the YOT (Dignan, 2010, p. 365). Through YOT's youth offender can be involved into locally provided interventions programmes which address the causes of offending, following the restorative idea. The so-called Youth Restorative Disposal is a non-statutory alternative to the formal criminal procedure dealing with minor criminality and antisocial behaviour. Within this framework the case of the first time offender is dissolved at the scene of the crime or at home through restorative approach, possibly involving the victim as well. If a further offence is committed after this Disposal, it will be subject of the criminal justice process. Cautions remain in the criminal records until the child turns 18 (Dünkel, Horsfield & Păroşanu, 2015, p. 51).

If the police decide that the case shall be prosecuted, they refer the case to the Crown Prosecution Service. The prosecution service may consider that the case shall not be prosecuted because of the weak evidence provided by the police or the lack of public interest in prosecuting it. In this case the prosecution can refer the case back to the police and initiate applying reprimand or warning. If intervention appears to be necessary because of either the offence or offending history if the 16-17 year old, the Crown Prosecution Service may order Youth Conditional Cautions. This serves as an alternative to prosecution and aims to rehabilitate the offender and/or to ensure that he restores the harm caused by his act. Children are typically cautioned in the police station in the presence of legal representative and their lawyer. Finally, if the case is serious enough and there is enough evidence provided, the case will be prosecuted either in front of the Youth Court or at the Crown Court.

Based on the Children and Young Persons Act 1933 the Youth Court shall be constituted on the level of Magistrates' Courts, where magistrates of District Judges make decision in their cases (Section 45). The magistrates of the Youth Court, who are lay members of the public, are chosen from a special panel, and their work is supported by the clerks (legal advisers) (Graham & Moore, 2006, p. 69). The purpose of the court is to hear charges against a child or a young person and to exercise any other jurisdiction conferred on Youth Courts (Section 45(1)(b)). The procedural rights of the children are protected by Section 47(2) of the Act, according to which no person shall be present at any trial of except the (a) members and officers of the court; (b) parties to the case before the court, their legal representatives, and witnesses and other persons directly concerned in that case; (c) bonâ fide representatives of newspapers or news agencies; (d) such other persons as the court may specially authorise to be present. If the child is prosecuted before the youth court at the first time, the primary sentencing option is the Referral Order, which aims to fulfil restorative goals (Dignan, 2011, p. 366). The order requires the child to appear in front of the Youth Offending Panel (YOP), which is a body of two lay volunteers (they receive training) and one member representing the local YOT **(**Dünkel, Horsfield & Păroşanu, 2015). Beyond the child, the parents shall attend the panel meeting, as well as the victim, if he is agreed to be involved. The legal representation is not compulsory in the process. The purpose of the meeting is to provide a forum, where the offence can be discussed and to conclude a contract on behavioural conditions which will be signed by the offender (Dignan, 2010, p. 366). The panel hears the child about the motivation and the circumstances of the offence and about his goals for the future, and encourages him to take responsibility for his behaviour and reflect to the victim's harm. Finally, the panel decides what kind of intervention may be appropriate to respond to the crime of the child (e.g. counselling or drug and alcohol training). The duration of the intervention is 3 to 12 months (Dünkel, Horsfield & Păroşanu, 2015). The panel hearing is successful if the child agrees with the conditions. If he refuses to accomplish the plan, he is referred back to the court proceeding. As a result of the successful Referral Order procedure no conviction will be recorded, therefore this is technically a diversionary process (Dignan, 2011, p. 366). The fulfilment of the contract is monitored by the YOT, and in case the child does not accomplish it, he will be referred back to the criminal procedure.

Other penalties are:

(1) conditional discharge (discharging the case with the threat of future punishment if the offender comes before court again within a maximum of 3 years period set by the judge);

(2) fine and compensation order;

(3) reparation order (the child is required to make reparation either to the victim or to the community, YOT has advisory and monitoring role);

(4) other ancillary measures (e.g. earlier the antisocial behaviour orders and now criminal behaviour orders);

(5) community orders (short intervention programmes);

(6) attendance centre order (the juvenile has to attend a police-based programme at the weekends);

(7) community service order (only for juveniles of 16-17 years);

(8) probation order (only for juveniles of 16-17 years, and it is possible to combine it with the community order);
(9) detention and training order (for 4-24 months, from which the first half is served in custody and the second half is served under supervision) (Dignan, 2010).

In more serious cases children can be tried in front of the Crown Court. The circumstances under which it is possible are the following: (1) being charged with homicide (2) being charged with a serious offence for which a person aged 21 or over could be sentenced to at least 14 years imprisonment (3) being charged with the offence of indecent assault, (4) and/or being charged jointly with a person aged 18 or older (who may also be committed to an adult court (Graham & Moore, 2006, p. 69). Within this framework children may be sentenced to long-term imprisonment. Juveniles above the age of 12 may be placed in detention. There are three types of juvenile secure facilities: (1) young offender institutions, (2) secure training centres and (3) secure children's homes.

There is also an overlap in the legal construction of child protection and juvenile justice bodies in England. According to Section 13(1) of the Children Act 2004 each local authority has to establish a Local Safeguarding Children's Board (LSBC) in England.[24] The LSBC consists of the establishing authority and the Board partners. Compulsory Board partners are, among others, the chief officer of police for a police area any part of which falls within the area of the authority (Section 13(3)b)), a local probation board for an area any part of which falls within the area of the authority (Section 13(3)c)), a youth offending team for an area any part of which falls within the area of the authority (Section 13(3)d)) and the governor of any prison in the area of the authority which ordinarily detains children (or, in the case of a contracted out prison, its director (Section 13(3)j). The objective of the LSCB's is to co-ordinate the activities of Board members "for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established" and to ensure effective work (Section 14 (2)a)-b)).

7. *Key agencies* of the youth justice system of England are community-based public bodies, among which most importantly the YOTs. The YOT is a multi-disciplinary agency of the local council. Its members are the police, probation officers, health housing and children's services, schools and education authorities and NGO's of the local community.[25]

In juvenile cases the referral to YOT is mandatory, therefore they meet basically every underage offender in the country. They participate in the justice procedure as advisory body, they have key expert role in the YOPs, and they have important role in monitoring the execution of punishments. As a result of a successful Referral Order they may supervise and control juveniles based on a "contract" 3 to 12 months long (Muncie &

[24]According to Section 65(1) of the Children Act 2004 "local authority" in England refers to (a) a county council in England; (b) a metropolitan district council; (c) a non-metropolitan district council for an area for which there is no county council; (d) a London Borough council; (e) the Common Council of the City of London (in their capacity as a local authority); (f) the Council of the Isles of Scilly; while "local authority" in Wales means (a) a county council in Wales; (b) a county borough council.

[25] Source: https://www.gov.uk/youth-offending-team

Goldson, 2006). YOT's are represented not only in the juvenile justice system, but also in child protective bodies (see under point 6).

8. *Key personnel of the intervention* are youth justice specialist working at the police, probation services, health care and child protection. Beyond the professional personnel lay people have important role both in local intervention and in the Youth Court.

9. *Typical instruments* of the English youth justice system respond to the risk factors identified by the youth justice agencies. There are a number of available behavioural programmes for juvenile offenders in England. According to the governmental website the "accreditation shows that these programmes are evidence-based and congruent with the 'What Works' literature".[26] In order to be accredited, each programme has to demonstrate its evidence-based nature, and commitment to future monitoring of quality of programme delivery. Table 13 provides a selection from the currently available more than fourty intervention programmes.

Table13. Intervention programmes accepted by the UK Accreditation System for Offender Behaviour Programmes

NAME	TARGET GROUP	DESCRIPTION
JETS (Juvenile Estate Thinking Skills Programme)	juveniles between 14-17	The JETS programme is based on the ETS cognitive skills programme but has been specifically re-developed for use with a juvenile age group. The JETS programme addresses thinking and behaviour associated with offending.
ART (Aggression Replacement Training)	people convicted of violent offences or who have problems controlling their temper	A groupwork which challenges offenders to accept responsibility for their behaviour; the aims are to reduce the incidence of assault, public order offences and criminal damage, increase public protection and challenge offenders to accept responsibility for their crime and its consequences.
Belief in Change	medium to high risk general offenders	A year long programme. It focuses on reintegration and building skills and support networks for release. It uses a range of methods including community living, structured group work, individual coaching and mentoring. It places high emphasis on building links in the wider community and increasing employability. Belief in Change encourages participants to think about their personal faith and spirituality and how this might support their process of change.
Democratic TC (Therapeutic Community)	prisoners	Democratic TCs provide a residential, offending behaviour intervention for prisoners who have a range of complex offending behaviour risk areas, including emotional and psychological needs and Personality Disorders. Democratic TCs provide a 24/7 living-learning

[26] Justice (2014) Offender Behaviour Programmes. Retrieved from https://www.justice.gov.uk/offenders/before-after-release/obp (16/06/2016)

		intervention for offenders whose primary criminogenic risk factors need to be targeted whilst simultaneously addressing psychological and emotional disturbance.
SOTP (Sex Offender Treatment Programmes)	sex offenders	SOTP has many sub-programmes, which target different groups of sex offenders in different environments (e.g. community, therapy, group therapy). The "Core" programme helps offenders develop understanding of how and why they have committed sexual offences. The programme also increases awareness of victim harm. The main focus is to help the offender develop meaningful life goals and practice new thinking and behavioural skills that will lead him away from offending.
COVAID Programmes (Control of violence and anger in impulsive drinkers)	alcohol addicts	A series of programmes aimed at reducing violence and anger in impulsive drinkers. The different versions of the COVAID programme can be delivered as groupwork or on a one to one basis, in either secure or community settings. All the programmes are aimed at reducing re-offending primarily by young men with a repeated history of violence whilst intoxicated
TSP (Thinking Skills Programme	any offender	A cognitive skills programme which addresses the way offenders think and their behaviour associated with offending. The programme aims to reduce reoffending by engaging and motivating, coaching and responding to individual need and building on continuity. It supports offenders developing skills in setting goals and making plans to achieve these without offending.

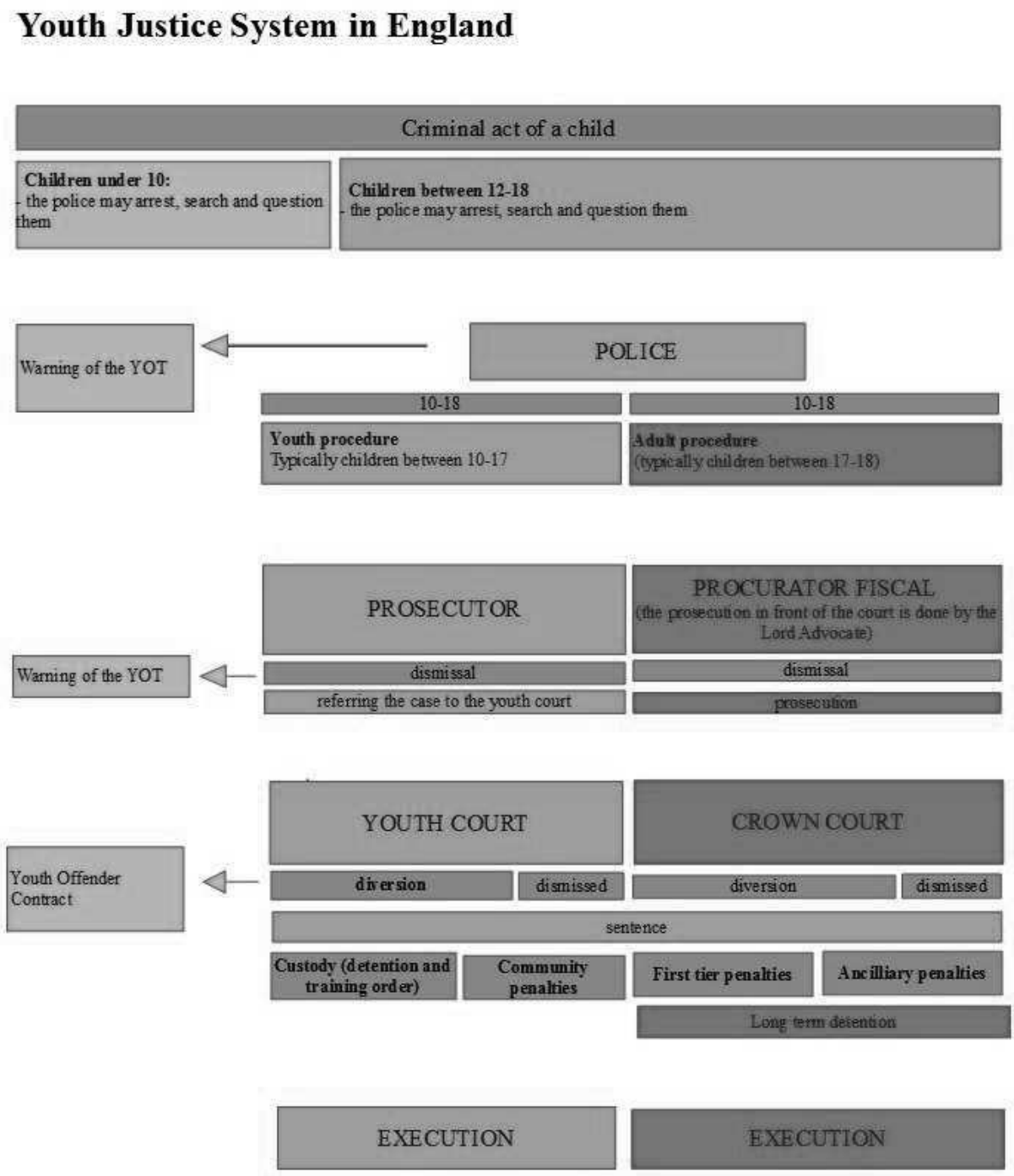
Source: Justice (2014). Offender Behaviour Programmes. Retrieved from https://www.justice.gov.uk/offenders/before-after-release/obp (15/6/2016)

According to Doak "since the mid-1990s, legislative, policy and practice developments in the field of juvenile justice in England have increasingly focused on restorative justice approaches, so that currently, a rather diverse range of restorative justice measures (or at least, such that are marketed under that label, as shall become clear) are available at both the pre-court (diversionary) level and the court sentencing level" **(**Dünkel, Horsfield & Păroşanu, 2015, p. 51). Thus, restorative programmes appear on every level of the youth justice procedure, both as a diversionary measures and a punishment. On police level there is a practice of restorative cautioning, in which trained police officers aim to encourage juvenile offenders to the reparation of the harms they have caused to the victim. Another example to the restorative techniques on police level are the partnerships between youth justice authorities, police and the local service providers, through which juveniles will completely be diverted from the formal system and shall perform informal restorative tasks assigned by the partnership (Dünkel, Horsfield & Păroşanu, 2015). The already mentioned Youth Restorative Disposal provides restorative solutions as well. On the court level the Referral Order is a restorative response to all young offenders without prior convictions who plead guilty. The Youth Offending Panel reflects on the offence and its consequences in these cases and decides together on an appropriate plan through which the offender provides

reparation to his victim or community. The actions included to the plan may also target the behaviour of the offender.

Restorative practices represent a great deal of the court decisions in England, and they have central role determining the manner offending behaviour by youth delinquents is responded to (Dünkel, Horsfield & Păroşanu, 2015, p. 57). According to Doak (Dünkel, Horsfield & Păroşanu, 2015, p. 5) the tendency that professionals and non-professionals make use of restorative techniques both in formal and informal procedures is a promising achievement, and contributed significantly to a strong down-tariffing tendency in sentencing in England. Although the lack of legislative and economic stability may affect the sustainability of the restorative approach and the 'tough on crime' policy limits its application to the minor cases, the achievements so far promise survival and further development.

Figure 6. Youth Justice System in England



IV.4. Minimum intervention model

Model Country: Scotland

1. The formal separation of juvenile and adult courts in Scotland happened in 1908 in Scotland, due to the passage of the Children Act for the whole United Kingdom. The system has developed further parallel to the systems of England and Wales, directed influenced by the dichotomy of the goals of care and control, welfare approach in establishing the needs of the child and treatment organised within the justice system (McAra, 2002). We can talk about an independent general philosophy governing exclusively the Scottish juvenile justice system only from the 1960's, when the Kilbrandon Committee was set up to review the existing juvenile justice system in Scotland and make recommendations to its improvement. The recommendations of the Committee, which was led by the High Court Jugde Lord Kilbrandon, put forward fundamental changes in the system. The basic assumption was that children who commit criminal offences were suffering from a similar set of difficulties in their upbringing and they are in need of appropriate measure to respond to these difficulties rather than their actual offence (Burman et al, 2010, p. 1149-1150). The system which was established based on the recommendations placed social work in the heart of the juvenile justice system and rejected justice-based decision-making and services. Juvenile courts and the probation services were abolished in 1968 (it came into force in 1971), and an entirely new system had been established to replace them: the Children's Hearing System. The informal process aimed to involve children and their families into the decision-making process, where the lay committee decided about the best interest of the child and the appropriate measures to apply. Only those children did not participate in this proceeding who committed the most serious offences, because their cases were still assigned to the adult court. The institutional revolution in Scotland was followed by the 'golden ages' of the welfare-based system in the 1970's and the 1980's.

   Although since 1999 the new Scottish Parliament has wide-ranging devolved powers in the legislation of the Scottish youth justice system (Dignan, 2010), Children's Hearing could not escape the impact of the 1990's turn in social policies in the United Kingdom. The emerging importance of public interest, associated with the increased risk management, punishment and deterrence had important impact on control of juvenile offenders and their families in Scotland too. The Children's Hearing System was reviewed by the Children Act 1995, as a result of which the best interest of the child was not necessarily the primary consideration of the hearing anymore (McAra, 2002, pp. 447-448). The interest and protection of the public became preferable if the risk to the public represented by the child was of a significant value. Policies towards persistent offenders became rather tough and punitive, while the needs-based approach was pushed to the background. In 2002 the Scottish Government took steps to improve the services and enhance the effectiveness of the youth justice system and developed the document on the National Standards for Scotland's Youth Justice Services, followed by the plan on Scotland's Action to Reduce Youth Crime (Burman et al., 2010). The approach of the latter built upon the 'what works' principle once again, requiring evidence-based

practices incorporated into various areas of child protection and crime prevention. As Burman and colleagues (2010, p. 1153) note these projects were entitled to tackle "criminogenic needs, rather than generic welfare needs, and tend to involve planned intervention, over specified period of time and are characterized by a sequence of activities designed to achieve clearly defined objectives". The action plan was followed by inter alia the Early Years Strategy in 2003, the Anti-Social Behaviour (Scotland) Act in 2004, the establishment of Community Justice Authorities and the programme Protecting Scotland's Communities: Fair, Fast and Flexible Justice (2008).

However the content of these changes did not entirely correspond to principles of the Kilbrandon Committee, the Scottish youth justice system still represents a unique welfare-oriented model among the European systems assigned to control juvenile criminality. Labelling effect of justice measures is considered to be harmful in this model, therefore attention is paid to filtering out those cases where the application of formal measures is not necessary. Minimum intervention becomes the primary objective in cases where punishment or other types of measures would risk secondary deviance (Cavadino & Dignan, 2006). This model may be called minimum interventionalist in focus, and participatory in institutional sense (Pruin, 2010). The Kilbrandon-ideas can still be found in the key principles of the Childen's Hearing System, such as:[27]

- children who offend and children against whom offences are committed should normally be dealt with in the same system - but children who commit very serious offences may be dealt with by the courts;
- the system is based on a concern for the welfare of the child not punishment;
- while the child's needs are normally the test for intervention this does not mean ignoring deeds;
- children's hearings are conducted in private but are open to prescribed public scrutiny;
- decisions in children's hearings are made by trained lay people, representing a cross-section of the community;
- hearings consider the whole child - that is the child in the context of his or her life
- the style and setting of hearings is relatively informal to encourage full and frank discussion while legal procedures are observed
- parents are usually the best people to bring up their own children and should be encouraged and enabled to do so whenever possible
- hearings must seek, listen to and take account of the views of children and their parents in reaching decisions
- children's hearings can make compulsory measures of supervision for the child and these measures encompass protection, treatment, guidance and control
- children should remain in their own community wherever possible and service provision should be integration.

2. The bifurcation of the understanding on client behaviour, similarly to the Netherlands,

[27] Source: http://www.chscotland.gov.uk/the-childrens-hearings-system/

Belgium, and England, exists in the Scottish system as well. Children are either dealt with by the Children's Hearing System, which may be defined as the administrative body for deciding about the need of intervention in cases vulnerable children rather than a forum of youth justice, or by the adult criminal justice system. While the first system had been built upon the general philosophy of minimum intervention, support for children in need and social inclusion, the second institution represents punishment and repression. Whether a youth offender lands in one or another is determined by two criteria: the first is the age of the offender, the second is the nature of his crime. Children under the age of 16 are relatively unlikely to be dealt with by adult court unless they have committed serious (violent) crimes, however for youth offenders between 16 and 18 adult court is the normal procedure in practice (McAra, 2002; Burman et al., 2010). Only those may be subject to Children's Hearing whose minor acts are signs of need for protection rather than persistent offending. This division of the target group suggests that offending behaviour of children and younger adolescents between 12-16 years is understood as a misplaced expression of their frustration and aggression following from their vulnerability determined by various social and age-related factors. In contrary to this, adolescents above 16 are seen as offenders who have similar motives and intelligence as adult offenders, and therefore their needs, as well as their vulnerabilities are of secondary importance. Despite the compulsory consideration of circumstances (e.g. through social enquiry reports) the latter approach puts older adolescent offenders to a disadvantaged position both in terms of warranting procedural rights and in responding to their needs.

3. On the individual level the *purpose of the intervention* is to support the socialisation process or the re-socialisation of child offenders through applying measures whenever it seems to be necessary. As a response to the public interest claims towards the system, the importance of the social inclusion perspective has increased in the youth justice system during the past decades. The communities gained an important role in preventing youth crime and creating safer environment: in line with the welfare philosophy of the Children's Hearing System, community prevention was built also on the idea that causes of juvenile offending relate to social factors, such as exclusion, poor parenting and unemployment (McAra, 2002, pp. 448-450). Negative social factors that appear increasingly as risk factors of juvenile criminality in the public discussions are the targeted by both formal and informal intervention strategies. The influence of the English policies regarding early intervention, public surveillance, and the growing attention on youth people as target group is unquestionable, however the implementation of the UK-wide policies in Scotland is rather mild and community-based. The Scottish implementation of the Anti-Social Behaviour (Scotland) Act 2004 provides a good example to the differences between the strategies aiming to maintain social order in Scotland and in England and Wales: although the Scottish authorities and court had the same opportunities to impose repressive measures to antisocial families and children actors of the Scottish system are unlikely to deal with social issues by means of repression and are the application of these is reported to be restricted to cases when other options (ABCs, parental agreement contracts, intensive support, etc.) have failed (Burman, 2010, p. 1182). It must be noted however, that although this observation may be

true to the intervention to petty offences and minor crimes, there is a parallel process of penalisation of 16-17 year old offenders. The adult criminal justice system that deals with the majority of these children took steps only recently to establish more youth-oriented court units, which, in contrary to the criminalisation effect of adult procedures, aim to reduce the frequency of serious offending and promote inclusion of youth. However Burman and colleagues (2010, p. 1193) warn that these structural changes hold the danger that the Scottish system loses its original identity.

4. The general *objective* of the Children's Hearing System is to provide a safety net for children who are referred to the system with regard to offending behaviour or vulnerabilities and to offer tailored solutions, which meet their needs. Through the protective measures applied, the system aims to build stronger families and safer communities, which support and protect children and serve their best interests (Strathclyde University, 2015). The Hearing should only impose a measure, if the juvenile benefits from the intervention – this is core element of the minimum intervention philosophy (Burman at al., 2010, p. 1175). Therefore, the objective of the system may also be fulfilled with no intervention, if this serves the best interests of the child.

5. The *task* of the Children's Hearing System is to improve social outcomes and experiences for children and who may be at risk. The assumption of the child being at risk may be based on various factors that are listed in the Children (Scotland) Act 1995 as grounds of referral. One of these is a criminal offence committed by the child. After the referral the actors of the system have to make decision about the most appropriate intervention for the child. The goal of minimum intervention is the leading principle on every stage of the procedure. If the Hearing decides about imposing intervention it must be determined whether it shall be residential or non-residential supervision. The task assigned to the service provider (namely the social worker of the institution) is to provide with education intervention in order to fulfil the mission of the system.

6. Scotland, being a common law country, does not have one Code for the substantive law and/or procedural rules that establish the youth justice system. Moreover, as we have seen before the system that deals with child offenders consists of two possible trajectories and therefore two procedures: the Children's Hearing and the criminal procedure in the adult system. As according to the law children belong to the adult justice system, while Children's Hearing is only and exceptional procedure. The procedural and material rules applicable in the Children's Hearing are established in various acts, among which most importantly in the Children's Hearing (Scotland) Act 2011, the Children Act 1995 and the Human Rights Act 1998 (University of Strathclyde, 2015). Children from the age of 8 (MACR) may be referred to a Children's Hearing on the ground of having committed an offence, but no child under 12 may be prosecuted in court (McDiarmid, 2013). Although the system had originally been established to fulfil the role of protection and education of child offenders, nowadays it deals primarily with protection cases of non-delinquent children and vulnerable families. Committing an offence under the age of 16, as well as in some cases above this age, is only one reason for the referral. In 2014-2015 in total

15,858 children and young people were referred to the Scottish Children's Reporters Administration (SCRA), from whom 14,141 were referred on non-offence (care and protection) grounds and 2,891 were referred on offence grounds.[28] Referrals can be made by any organization, professional or non-professional person (Strathclyde University, 2015). The system builds on local welfare tribunals that consist of unpaid lay panel members. The 'Reporters', who are assigned to investigate the child's environment, protection history and other relevant information for the procedure are professionals with social work or legal background. The investigation aims to unfold those circumstances that are relevant in deciding whether the Reporter should refer the case to the Children's Hearing and initiate further supervision or protection measures for the child (Burman et al., 2010). According to McAra and McVie (2007) only 11 percent of children referred to the Reporter are brought to a Hearing. If the case does not require any formal action yet according to the Reporter, he can suggest to the parents or the child to seek voluntary support from NGO's, health care providers or other organizations. The Hearing shall be attended at least by the Reporter, the three (lay) panel members, the child and his parent or guardian. Based on the individual circumstances of the child or the offence other agencies, such as the police officer, the representative of the child, the prison officer, the child's current carers, school staff, social workers or even the press may attend as well (Strathclyde University, 2015). The overall task of the Children's Hearing System is to decide whether or not to apply a measure for a child, and if they apply a measure, what conditions shall be attached (e.g. to supervisory measures). It is not the goal of the process do decide whether the child is guilty in committing a criminal offence or not. Based on the hearing the panel members may decide to discharge the case, to defer the hearing and require more information, or apply compulsory (residential or non-residential) supervision order (Burman et al., 2010, pp. 1174-1177). Children and parents have the right to accept or deny the grounds for referral and disputed facts are dealt with by a sheriff.

The adult penal law is established by the Criminal Procedure (Scotland) Act 1995, Anti-Social Behaviour (Scotland) Act 2004. This procedure constitutes a dramatic shift from the needs-based welfare approach of the Children's Hearing. There are three court levels: the District Court, the Sheriff Court and the High Court. The District court deals with the minor offences, and may impose a fine of at most £2500 or detention for at most 60 days. The Sheriff Court deals with the less serious offences, which may be tried by the sheriff only, or by the sheriff and the jury of 15 people. In the 'summary' procedure of the sheriff at most 3 months of detention or fine of at most £5000 may be imposed, while the jury may impose more severe punishments. The third level of the court system is the High Court, which deals with the most serious cases (e.g. murder, robbery) and where the trials are presided over by the judge with a 15 person jury. In the High Court procedure the young person has the same rights to defence counsel as adults. In the Scottish system the prosecutorial power is delegated to the Procurator Fiscal who may decide about the prosecution of the case. The actual prosecution is undertaken by advocates appointed by the Lord Advocate, who act in public interest (Burman et al., 2010).

[28] Source: http://www.chscotland.gov.uk/the-childrens-hearings-system/

The Court may impose custodial sentences, community sentences, admonish the offender or order absolute discharge, or remit the disposal to the Children's Hearing (Burman et al., 2010). The Community-based disposals are run by social workers in the justice system, who are responsible for organising the services and supervising the juveniles. The available sentences are (1) Probation Orders, (2) Community Service Orders, (3) Supervised Attendance Orders, (4) Drug Testing and Treatment Order and (5) ASBO's. Children who receive custodial sentences may be placed in secure care or in YOI's. Placement in secure care is more likely for children under 16 (earlier this was the upper limit), while children above 16 are placed in YOI's where they may be detained until the age of 21.

7. The *key agencies* of the youth justice system are community agencies, schools and citizens, as well as the social workers that support and supervise children and families at risk. Within the Children's Hearing System the Reporter has the key role in deciding whether or not a compulsory measure is necessary.

8. As the *key personnel* of the Scottish juvenile justice system, social workers have the responsibility to implement supervision requirements and provide assistance in organising relevant interventions to the child. The Edinburgh Study of Youth Transitions and Crime studied the nature and impact of children's contact with the agencies of formal control, and among these most importantly the police and social workers (McAra & McVie, 2007). Although only 11 percent of the referrals are brought to the Hearing, the most common disposal of these cases is supervision by a social worker. The researchers found that social workers, despite the political pressure of applying rather punitive strategies, continue to follow the principles of the education model of intervention. In most of the cases children were referred to additional services which fulfilled educational goals, such as psychologists or Youth Strategy Groups, and only one in three child offenders received treatment that aimed to work on his offence. The study shows that social workers have one-to-one contact with the juvenile offenders during the period of the supervision: only one quarter of the children received regular individual work, while in the rest of the cases the contact was sprodaic or it happened only in emergency cases. Despite the general welfarist approach of the social workers McAra and McVie (2007) found that the imposition of a supervision measure, that may become 'usual' for certain children, has a rather labelling effect instead of offering a cure for the social problems. According to the researchers the cumulative effect of the repeated systemic contact "has the potential to stigmatize and criminalize".

9. The Scottish system, as mentioned above, has gone through significant changes in the last decades, most of which represent the impact of the English policies on controlling youth criminality. The results of the English research in developmental criminology and the Scottish policy shift towards evidence-based programmes in tackling youth delinquency underpin the increasing focus on the population "at risk" of future offending and re-offending (McAra &McVie, 2007). The growing attention to this target group implies growing attention to specialised programmes tackling specific issues. Beyond the

general policies, which aim to implement early intervention for vulnerable population, there are numerous projects organised by NGO's targeting persistent offenders, drug users and use the same cognitive behavioural methods and principles of restorative justice as the programmes introduced in the Netherlands, Belgium and England (McAra, 2002). Table 14 contains examples to interventions available to child offenders in Scotland. Youth Justice Social Workers, Intensive Community Support and Learning Service, Police Scotland, schools and NGO's can make referrals to these programmes. The availability of the services is limited to certain areas of the country in most of the cases.

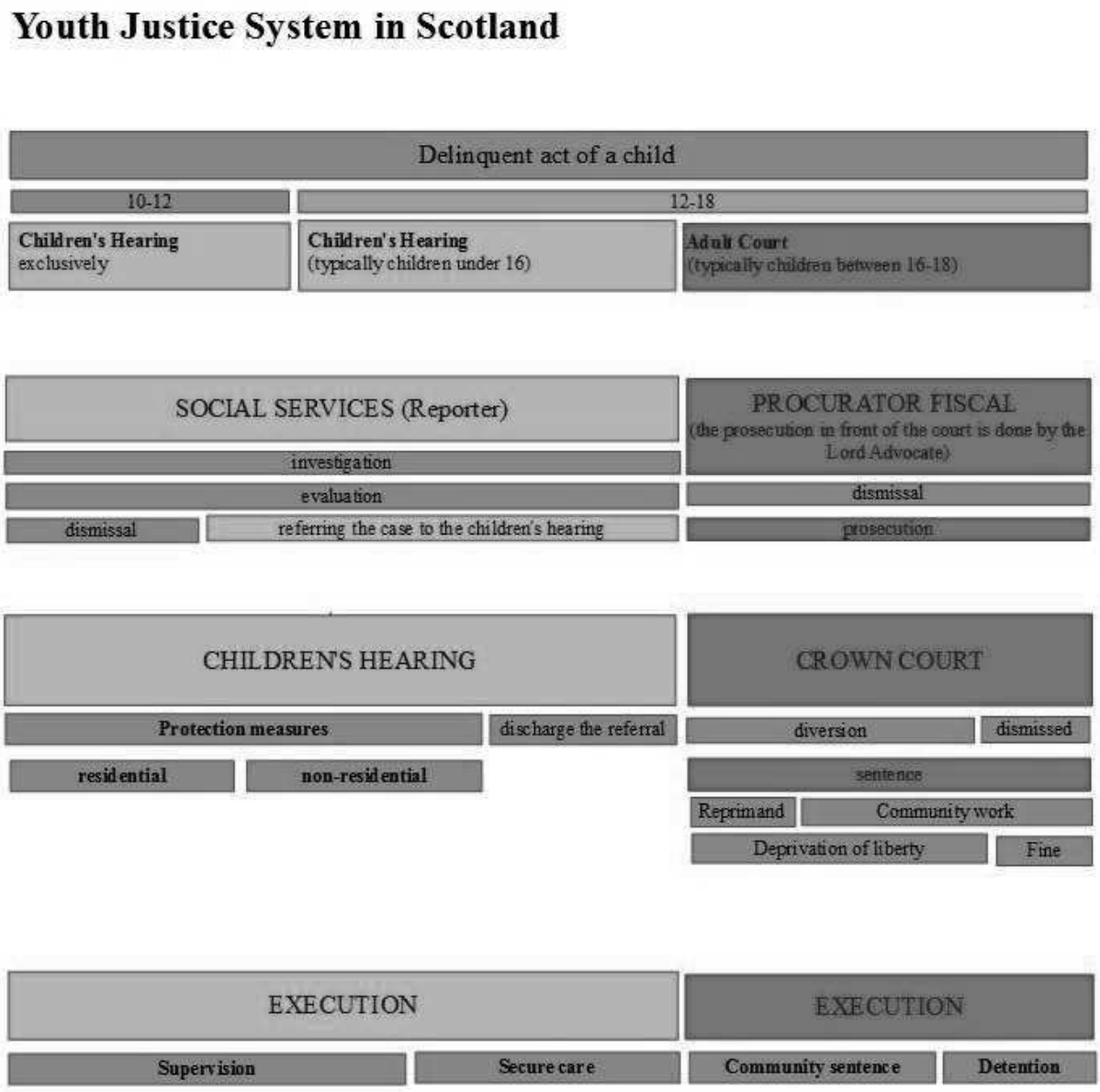
Table 14. Examples to the available intervention programmes in Scotland

INTERVENTION	TARGET GROUP	DESCRIPTION
Procurator Fiscal Youth Diversion Project of SACRO[(1)]	young people aged 16 and 17 years who are at risk of moving into the adult criminal justice system	A diversion programme, which provides individual and group sessions covering a variety of topics. The programme of work takes around 3 months to complete, sessions include topics such as: looking at offending behaviour or antisocial behaviour, raising awareness about the victim's perspective, drugs and alcohol awareness, education and training.
Youth Group Work Programme [(1)]	young people to discuss the causes and consequences of their offending behaviour	Project includes group work sessions for 3 or more young people aiming to discuss the causes and consequences of their offending behaviour, decision making, victim empathy, practical problem solving and perspective taking. The sessions encourage children to consider the consequences of their behaviour in various aspects of their lives. The programme is followed by a monitoring period of 6 and 12 months to see if any further incidents involving offending behaviour have taken place.
New Routes[(2)]	males aged 16-25 who are prolific offenders, serving a prison sentence of between 3 months and four years	New Routes provides support for individuals through mentoring for up to 6 months pre- and 6 months post-release. It provides support service through the transition helps the individual progress into positive activity.
Moving on[(2)]	children over 16 who have multiple barriers to employment such as those at risk of (re)offending	Personal Development Mentors help individuals to address issues such as offending behaviour, employability, literacy and numeracy, communication, and inter-personal skills as well as offering a more specialist learning.
Works4You[(2)]	children over 16 who are serving a community order or requiring through care support can access this service	Works4YOU is underpinned by one to one key-worker support while much of the service is delivered in a group setting. Interventions include core and basic employability skills competency building, guidance through the disclosure process, community education, progression into further education, training or employment.
U Turn[(2)]	children over the age of 16 who have multiple barriers to employment, such as those at risk of (re)offending	There are a variety of groups which take place both in the local unit as well as opportunities to volunteer with the group on local projects. It can be as diverse as artwork to IT skills, healthy eating to working in a hospital garden.
SMART - Recovery[(2)]	individuals who are in recovery from drugs, alcohol and compulsive behaviours	A support group for people in recovery, using tools from Cognitive Behavioural Therapy and Rational Emotive Therapy. Currently there exist

	who are progressing through the criminal justice system	three SMART groups, run by project partners.

Sources: [1]http://www.sacro.org.uk/services/youth-justice; [2]http://www.apexscotland.org.uk/apex-services/youth-services/

Figure 7. Youth Justice System in Scotland



IV.5. Justice model

Model Country: Finland

1. The MACR was set at 15 years in the Finnish Penal Code of 1889, however, at the time it was possible to impose placement in a reformatory institution or disciplinary penalties for children between 7 and 14 (Lappi-Seppälä, 2011, p. 205). At this period, when the first child protective movements acted to reform juvenile justice and the first juvenile courts were established Europe-wide, Finland was the autonomous grand duchy of Russia. Although in 1902 important efforts had been taken by a special committee to draft an act for the education of juveniles in the "Norwegian style", the Russian emperor refused this law. After the civil war and independence in 1917 Finland adopted its first Child Welfare Act only in 1936, but the lack of legal regulation did not encumber the organic development of the welfare-approach on dealing with juvenile offenders. The policy on social and family-matters as introduced by the law of 1936, has been directed towards meeting some of the needs of families and children, most importantly financial needs (Hearn et al, 2004). Finland established juvenile prisons in 1927, transforming reformatory institutions to prison facilities, and allowed indeterminate sentences similarly to other Nordic countries. In 1940 Finland revised its juvenile laws and enacted the amendments which contained fundamental changes (Lappi-Seppälä, 2011). The reform introduced the obligatory supervision next to conditional sentences and established prison facilities for young people between 15 and 20 years, where indeterminate sentences could be served in line with the treatment philosophy (Lappi-Seppälä, 2010, pp. 424-425). Although the indeterminate juvenile imprisonment was criticized on human rights grounds, it was only abolished from the Finnish law in 1976 together with the youth prisons (Lappi-Seppälä, 2011). The anti-treatment movement and, as a result of this, the decarceration and the "minimum-intervention" approach towards juvenile offenders began in the 1960's. Along with these changes no justice alternatives had been developed in the Finnish system that could offer useful alternatives to imprisonment because the idea of responsibilisation of children was strictly rejected (Lappi-Seppälä, 2010, pp. 424-425). The prison rates began to drop drastically, and the vast majority of the juveniles had been diverted to get welfare support and care. Alternatives were to be found only in child protection and the welfare system. The sentencing structure was amended only in the 1990's, which period is called "the revival of the rehabilitative ideal" by Lappi-Seppälä, (2010, p. 425). In 1997 the juvenile punishment order had been introduced as a pilot programme, and in 2005 it became a sentence available in the whole country. The revision of the Penal Code of Finland, and as a part of this the juvenile justice system, is happening recently.

   The juvenile justice system in Finland in its current form does not differ essentially from the adult system in its basic philosophy: free will and accountability, and focus on deeds. Children in conflict with the law are considered as responsible agents as well as bearers of rights who may be adjudicated in due process. This model of juvenile justice, where only limited attention is paid to the different treatment of juvenile offenders, may easily lead to disregarding the needs of problematic youngsters. Or, as it shows in case of

Finland, it may lead to the welfare-oriented system where only few children are dealt with by the justice system (Cavadino & Dignan, 2006, Pruin, 2010). Finland invests recently more in the development of child protection in order to eliminate risk in the family and social network than investing in juvenile justice. This approach, however, does not necessarily mean that children are treated in their best interest by the system. Pitts and Kuula (2005) estimated that on welfare basis Finland removes from home and institutionalises more children pro rata than do England and Wales.

2. The formal and law-abided approach of legislation on the strictly taken juvenile justice in Finland suggests that the *understanding on the clients' behaviour* in Finland supports the idea that children are rational and responsible actors. Within the framework of the juvenile justice system they are entitled to due process and a fair sentence that responds to their needs as well, with regard to their young age. In contrary to what the legal build-up suggests, in practice children are actually seen as vulnerable individuals who are unable to recognise the wrong nature of their actions. Consequently, they are in need of specialised care and support rather than repressive punishment, in order to become useful members of the society. The tendency that the system diverts practically the whole population of juvenile delinquents to child protection resembles the 1970's medical approach on deviant behaviour, that perceieved deviance as 'social illness' that shall be cured. With this approach, the Finnish system is an irregular example to the justice model, because its build-up does not reflect to the approach of the system.

3. The *purpose of the intervention* is to sanction crime, while the human rights of the offender are fully respected. The principles of the Criminal Sanctions Agency (2013) are the following:
    - Basic rights and liberties as well as human rights are protected (respect for human dignity);
    - Treatment is humane, appropriate and equal (justness);
    - All activities are lawful and comply with justice and fairness (fairness);
    - Enforcement is carried out so that it supports the sentenced persons' individual growth and development as well as their intention to lead a life without crime (Belief in an individual's potential to change and grow).

    As mentioned above, these principles characterize only justice intervention. The regulation on child protection aims to serve the balanced development and the wellbeing of the child, support his education, provide with safe environment, and respond to his other relevant needs (Section 4(2) of the Child Welfare Act).

4. The penal procedure for juvenile offenders is based on the guarantees of procedural rights. The *objective of the system* is to provide a fair trial. During the trial the personal history report provides information to the court about the background of the young offender, assessing the potential impact of different sanction alternatives (CSA, 2015b). The report has to be required by the prosecutor, and either the social welfare services or the probation service shall prepare it, depending on the availability of the probation office in the area where the juvenile comes from (Lappi-Seppälä, 2010, p. 448). The *objective*

of the sentence in practice is focusing on the individual background and needs of the offender. The judge may decide whether a repressive (e.g. fine, imprisonment) or an educative (e.g. juvenile penalty order (JPO), conditional imprisonment) punishment shall be imposed. In case of conditional sentences the supervision begins with the assessment of "the needs and resources present in the offender's current life" (CSA, 2015b). Based on this evaluation an individual sentence plan determines the goals and means of the sentence. The real content of the sentence is determined in this stage.

Since youth offenders are treated within the child protection system, it is worth to mention the objectives of the treatment within this system as well: according to Section 1 of the Child Welfare Act states that „the objective of this Act is to protect children's rights to a safe growth environment, to balanced and well-rounded development and to special protection."

5. The *task* of the juvenile justice in narrow sense is to impose punishments to juveniles, while it also promotes restorative solutions and educational programmes which shall provide support in the resocialisation of children. In the more pragmatic sense, where the proportion of welfare control measures applied to juvenile offenders is also taken into consideration, it may be concluded that the main task of juvenile justice is to apply non-intervention or divert children to the child protection system in largest possible amount.

6. Rules on the juvenile justice system of Finland, about which Lappi-Seppälä (2010, p. 424) notes, that they hardly comply with the concept of juvenile justice in most of the European countries, are set in the Penal Code of Finland. Similarly to the Dutch and the Hungarian legal construction the juvenile procedure is basically an exceptional procedure, where exceptional rules of substantive law shall be applied. In contrary to the Dutch law however, there is no specialised judge involved to the procedure, and there is no further requirement towards the judge in respect of education or training. Both the procedural and substantive laws contain limitation to the general penal provisions, and juveniles may only be punished by mitigated sentences. The MACR is set relatively high, 15 years, alike the other countries in Northern Europe (with the exception of Denmark). Under this age the court cannot establish criminal liability for the offence, but the police can question children.

The framework of the juvenile penal procedure is the same like the adult procedure. The police investigate the case and if they have collected satisfactory evidence they refer it to the public prosecutor. There are no special police units for juveniles, but there are some local areas where arrangements had been made on special attention to juveniles. Police co-operate with child welfare: if a child is suspected of committing a crime the police are obliged to report it to the child welfare (Lappi-Seppälä, 2010, p. 447).

The prosecutor may dismiss the case, apply diversionary measure (see below), apply summary fine or prosecute the case in front of the court. In case of non-prosecution the prosecutor may apply oral caution or refer the case to mediation. Although formally the prosecutor decides whether a case should be prosecuted, Lappi-Seppälä notes (2010, p. 448), that the police, the prosecutor, the social welfare services and the judge are usually co-operating from the very beginning of the case.

The court may as well dismiss the case, divert it (e.g. with regard to the successful mediation process) or impose punishment. The punishments which may be applied by the court are the following: (1) fine, (2) community service and surveillance punishment, (3) conditional imprisonment (supervision is compulsory for juvenile offenders), (4) unconditional imprisonment and (5) JPO (Lappi-Seppälä, 2010; European Commission, 2014). According to Section 10(a) of the Finnish Penal Code, a "juvenile penalty may be imposed for an offence committed before the age of 18 years, if: (1) a fine is, with consideration to the seriousness of the offence, the guilt of the offender manifested in the offence and the criminal history of the offender, an insufficient punishment and there are no weighty reasons requiring the imposition of an unconditional sentence of imprisonment, and (2) conditional imprisonment with supervision is not deemed sufficient in order to promote the social adaption of the offender and the prevention of new offences." The JPO lasts 4 to 12 months long and its main element is the supervision by social workers. It may contain several different supervised activities, which are identified as necessary, such as support and guidance, community work, social skills trainings, anger management, etc. Although social workers are trained to work with juveniles and there are methodologies available to them to provide appropriate supervision, the relatively new sentence is not a typical instrument yet. According to the CSA (2015, Table 30) between 2005 and 2014 in average 17,5 JPO's have been applied in Finland, with a decreasing tendency. Monitoring sentence and community sentence have not been imposed to juveniles between 2005 and 2014 (CSA, 2015, Table 33). The average number of prisoners under 18, taking both remand and imprisonment sentences reached 10 only in 2011 between 2005 and 2014 (CSA, 2015, Table 3), and in 2014 there were only 2 imprisonment sentences imposed to children under 18 (CSA, 2015, Table 4). Presuming that youth criminality does exist in Finland we can draw the clear conclusion that these youngsters are treated rather outside rather than inside of the juvenile justice system.

7. The Finnish system is famous about the extreme low juvenile imprisonment rates and the welfare approach that diverts basically the whole population of child offenders to the child protection system. Accordingly, as Lappi-Seppälä (2010, pp. 475-477) notes, the child protection system in Finland plays a far more important role in controlling youth criminality than juvenile justice itself. With regard to this phenomenon we may argue that the *key agency* of the Finnish juvenile justice system is the child protection system.

The child protection in Finland is decentralised, it is based on municipal authorities. Municipalities are free to decide which services are necessary for their population, and which from these needs are to be provided locally, together with other municipalities or through private service providers. Institutional care of children is one of the outsourced services, where placements are financed based on daily fees paid by the municipality to the service provider. Social services are completed by NGO work (Ministry of Social Affairs, 2006).[29]

[29] The biggest non-governmental child protection organization in Finland is the Mannerheim League. They co-ordinate among others parenting trainings, bullying prevention programmes, peer programmes agains discrimination and a national helplines for children and parents. The organization works with 20.000

Some Finnish researchers reported about the worrisome tendencies regarding to the treatment of juvenile offenders within the welfare system. According to Lappi- Seppälä (2010, pp. 475-477) nearly half of the juveniles who receive JPO's have at some point of their lives already been placed outside of home. Hearn and colleagues (2004) point out that the attention of child protection is often drawn to the child with regard to antisocial behaviour in teenage years: „very often the problems of the child and his/her behaviour are reported as child protection problems only in the children's teenage years, when asocial behaviour, alcohol or drug abuse and minor crimes are regarded as main child protection problems in addition to the family conflicts in the teenagers' families". Pitts and Kuula (2005) completed this observation with requiring data on the number of out-of-home placements and institutionalisation of those who are registered as troubled youngsters. Offending appears to be indicator of out-of-home placement yearly for about 100 10-14 year olds and 150 15-17 year olds (Lappi-Seppälä (2010, pp. 475-477). The data on social services shows, that 2,5% of the cohort of 16-17 year olds lived in care in 2010 (NIHWF, 2010, p. 51), while this percentage is significantly lower in average (1,4%) and among small children. The number of out-of-home placements of children in the juvenile age had increased until about 2010, and since that it shows a stagnating tendency, which means that about 10.000 children live in alternative care in Finland (NIHWF, 2015). According to Pösö and colleagues (2010) this process may be seen as the Finnish way to express its "risk policy" and institutionalised intolerance towards deviant behaviour during youth.[30]

About the approach of alternative care in Finland Pösö and colleagues (2010) note that closed care is never the subject matter of legal regulation or policy-documents, which apply the concept of voluntary and involuntary placement (for example psychiatric care and substance abuse care include usually involuntary placements) rather than referring to the type of the institution. They note that "in practice this is often implemented in closed accommodation units, but the practice is not described in legislation or societal debate as closed accommodation". Closed facilities for children are referred to as "special care" since the child protective legislation of 2006 and 2007. Special care approaches psychological and behavioural problems through educational and psychiatric treatment with the purpose to interrupt the child's harmful behaviour to him- or herself. Since special care is always a measure of last resort, the problems have to be serious, and the supervision of these units should correspond to the monitoring requirements of other institutions of deprivation of liberty. Yet, there is still lack of information collected about the cases provided in these institutions (Pösö, Kitinoja & Kekoni, 2010). This is

volunteers and all over the country.

[30] Regarding to the institutionalization in the Finnish welfare system it is worth to note the observations of one of my interviewees in Finland. The young social worker pointed out, that the Finnish society is very likely to agree with institutional child-rearing from the very beginning of children's lives. Although it is possible to spend a relatively long period in maternal leave, Finnish women and men often choose to leave their babies at day-care institutions and go back to work before they could walk. This period is followed by the kindergarten, and school, and although children live at home they spend most of their time in institutions. According to his idea, the fact that institutions serve as substitutes to primary caretakers has the side-effect of insufficient attachment and control within the real family. He called this the "lost sense of community" in Finland, which led to the toleration of formal and institutional control rather than the control of natural communities.

particularly problematic with regard to the phenomenon that the growing number of out-of-home placements and more generous staffing raised the costs of quality care in Finland, and therefore the best value for the price in (private) care institutions became an issue of municipal policies (Pösö & Laasko, 2015).

In the Finnish child welfare system there are six residential child welfare institutions with special care units, where annually 300 children between 12 and 17 are placed with regard to their asocial behaviour (Honkatukia, Nyquist & Pösö, 2006). As Honkatukia and colleagues (2007) note, these institutions are reformatory schools (*koulukoti*), which would belong to the juvenile justice system in other jurisdictions. In Finland they are regulated and operated by the Ministry of Social Welfare and Health, which makes them child-protective institutions of the country (Honkatukia, Nyquist & Pösö, 2006). The placement is ordered by the child protection agencies of municipalities. As it is a measure of child protection, both the decision about the placement and its financing are the responsibilities of the municipality of residence of the child (Section 16a of the Child Welfare Act). The child protection may decide that, with regard to the special needs of child who committed certain criminal acts that he has to be placed in a specialised institution outside of the territory of the municipality. Any dispute about the decision falls within the competence of the Administrative Court (Hearn et al, 2004). According to Lappi-Seppälä (2011, p. 245) most of the children are placed in these institutions voluntarily, and punitive motives play no role in the placement which is only indirectly motivated by the fact of offending.

8. The *key personnel* of the (narrowly taken) Finnish juvenile justice system consist of all kinds of legal professionals, thus judges, advocates and prosecutors who protect the procedural rights of the child and ought to find the most appropriate punishment or alternative serving the best interest of the child. However, considering the fact that most youth offenders are treated outside of the juvenile justice system, we may conclude that the real key personnel are the social workers and other professionals of the child protection system who actually meet juvenile offenders. Social workers have traditionally the central role in the municipal welfare services, and among these, child protection (Hearn et al, 2004). They make decisions about appropriate care, as well as institutional placements (Pösö & Laasko, 2015). If there is a disagreement between the child's caretakers and the social worker, the decision may be disputed at the Administrative Court. Social workers may also be involved in the judicial decision-making in juvenile justice, through making the personal history report or informal participation (Lappi-Seppälä, 2010, p. 448).

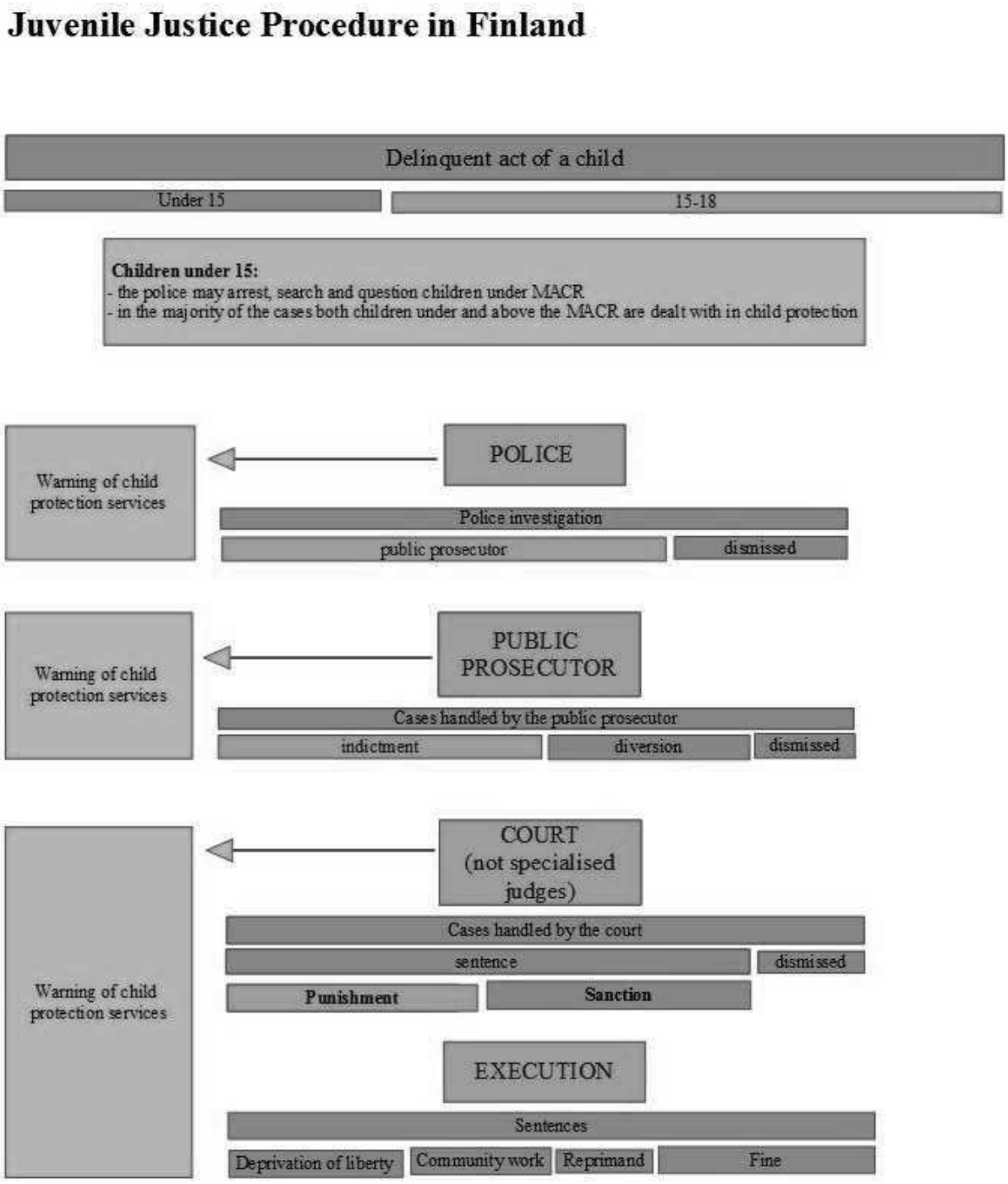
   Social workers working at the municipalities and care in Finland should have professional education in social work, while counsellors working the special care can have various educational backgrounds in social, youth or health studies (Pösö, Kitinoja & Kekoni, 2010).

9. The *typical instruments* of the justice system in Finland are different forms of formal and informal diversion in all stages of the procedure. The two grounds of non-prosecution are strictly defined by the law: (1) the offence has to be a petty offence that caused

irrelevant harm and to which the expected punishment would be fine, (2) the act should deemed to be the result of "thoughtlessness and imprudence" rather than bad intent and severity of the expected punishment shall not exceed 6 months of imprisonment, (3) with regard to the lack of expediency in those cases where the offender had already taken actions to prevent or remove the consequences of his offence or reconciliation between the offender and the claimant has already been realised, (4) in those cases where the offender is prosecuted for various offences and this particular offence would have no practical relevance (Lappi-Seppälä, 2010, p. 437). Mediation – as mentioned under the third ground of non-prosecution – is not part of the Finnish justice system, and the agreement between victim and offender does not necessarily guarantee non-prosecution, however it may be a mitigating factor in sentencing. Mediation in Finland is based on voluntary work, which means that mediators are unpaid volunteers who had taken a training course of 30 hours, and their work is organised by the municipal social welfare authorities (Lappi-Seppälä, 2010, p. 438).

In a small amount of cases, which reach the stage where a sentence has to be imposed the typical instrument applied is fine. 74% of the court sentences impose fine for 15-17 year olds while in case of young adults (18-21) this is 62% (Lappi-Seppälä, 2010, p. 439). Fine may be ordered in trials or in simplified, so-called "summary", processes of the prosecutor. In support of the children and to avoid putting unnecessary burden on families, the system allows the postponement of the payment until the child reaches the age of 18 and begins to work. The court imposes day fines, the minimum amount of which is 1 day fine and the maximum 120 day fines. The imposed number of day fines depends on the severity of the offence. The value of the day fine depends on the financial opportunities of the convicted person. In case of juveniles the day fine may never be converted into imprisonment, although it is possible in case of adults (CSA, 2015c; Lappi-Seppälä, 2010).

Figure 9. Juvenile justice procedure in Finland



IV.6. Crime control model

Model Country: Hungary

1. The establishment of juvenile justice in Hungary dates back to the end of the 19th century, the time when the country as a part of the Austrian-Hungarian Monarchy started to establish its own separate legal institutions. The general philosophy of the first Hungarian Penal Code, which was called Csemegi Code after the famous Hungarian lawyer Károly Csemegi, was already outdated when it came into force in 1878. Although it set MACR at 12 and contained some exclusive rules to juveniles, it did not pay attention to the causes of the behaviour. The Hungarian scientific movement at the turn of the 20th century was highly influenced by the Western European and most significantly by the German legal theory (see Balogh, 1909). The idea that child and juvenile offenders are rather the victims of their own vulnerability and unfortunate environmental circumstances (such as their family situation or poverty) than the pure wickedness of mind, implied broad changes focusing on the reparation of the possible damages. Jenő Balogh (1909), one of the most important contemporary lawmakers in Hungary urged changes both in the juvenile justice system and in child protection in Hungary. He explained debauchery as a growing problem entailed by the fast urbanization and the systematic destruction of the sense of traditional community, which has not been replaced yet by any new model in which moral rules could be delivered appropriately. Two fields of intervention must be strengthened simultaneously in his opinion: on the one hand he urged to reform the justice system for juveniles to become a protective and educative institution for those children who had already shown problematic behaviour, while on the other hand he aimed to build up the system of child protection as a preventive system of care and public administration. Developing preventive strategies through social policy was in the main focus of his work. Along the welfare-oriented general philosophy both juvenile justice and child protection began to develop: at the beginning of the 20th century the child protection and care were taken into state responsibility instead of civil charity. Two important laws were adopted in 1901, the Act on the state childcare institutions (Act VIII of 1901) and the Act on the care of the children in need of public support above 7 years (Act XXI of 1901). In 1908 a comprehensive amendment to the Csemegi Code introduced the substantive juvenile law and obliged the judge to take into consideration of the intellectual and moral maturity of children in front of court.[31] The MACR remained 12 years, but the age of full responsibility had been raised from 16 to 18 years. Parallel to the legal changes new forms institutions were established for juvenile offenders and antisocial children: reformatory schools (*javitóintézetek*). These institutions

[31] According to the contemporary sources children were required to repeal the Decalogue in front of court so that could decide whether they had the capacity commit criminal acts and foresee the consequences of his acts. Liability of the child was based on the result of this hearing. Jeno Balogh (1909, p. 126), the leader figure of the Hungarian juvenile justice movement found that this practice was wrong, because depraved children of the lower class did not suffer from the lack of religious education but the lack of attention, control and discipline within their families and communities.

belong historically to the ministry that is responsible for social affairs, demonstrating the need for welfare intervention in case of juvenile delinquency. The substantive amendment of 1908 was followed by the procedural amendment in 1913, which established the juvenile courts in Hungary. The new procedural regulation aimed to ensure fair trials, and made use of the support of the new (non-professional) patronage movement. The juvenile court in Hungary has never been entirely independent from the general court system, but this period was probably the peak of its functional independence and flexibility over the past century. Judges had broad discretionary power in juvenile cases and they had the freedom to apply penal sanctions or child protective measures depending on the child's maturity.

First World War set back the development of the welfare-based juvenile justice system in Hungary, and the regime after the war had no interest in its further improvement. Important changes happened in this field only after the Second World War, when the socialist regime transformed the whole legal system based on the Soviet Union. As a part of the denial of the values of the previous governments the socialist government integrated the juvenile courts into the general court system, and demolished the old welfare-based values. Control and punishment of offenders became the primary goals of the justice system, and intellectual and moral maturity was not necessary for the punishment anymore (Váradi-Csema, 2010). Although the socialist laws came into force shortly after the establishment of the government, the first socialist Penal Code was adopted only in 1961 affected by "legislative wave" in Eastern Europe (see Chapter VII). The new law abolished the remaining of the welfare-based elements within the juvenile justice stressing aim *philosophy of justice* that must be realised in punishments. In case of juveniles the punishment aimed to "correct" wrong behavioural patterns as well. Although, the Penal Code of 1961 did not pay particular attention to juvenile matters, it stabilised the system and raised MACR to 14. The latter step seems logical with regard to the harsh penal regulation, and the lack of attention on maturity that did not fit children of 12-13 years anymore. Later on, as the socialist regime 'softened', criminological theory began to pay attention to a variety of factors that could play a role in what they called 'capitalist heritage' in the economic system, as well as other factors in the direct environment of the child (family, school, peer-groups) (Vigh, 1987; Molnár 1987). The next Penal Code of 1978, which remained in force until 2013, followed the system of the Penal Code of 1961, but gave priority to the preventive measures rather than punishments in juvenile cases. The distinction between the education-oriented preventive measures and punishments holding repressive goals is a traditional element of the Hungarian penal law. The shift from stressing preventive measures instead of punishments was a sign of shift towards more lenient measures and education in the field of juvenile justice.

The first Penal Code after the political transition came into force after a long drafting process in 2013. Although the drafting of the new Penal Code began at 2000, and there were different forward-looking recommendations (Csemáné & Lévay, 2002) and concepts (Ligeti, 2006) produced, the final draft of the Fidesz-government in 2012 missed the historical chance to create something entirely new and modern instead of putting the socialist heritage forward. For various political reasons it was of high importance to adopt the law quickly, which left no much space for better consideration of

the previous drafts on creating a separate juvenile law and strengthening the position of diversion and the work of child protection institutions. According to Rosta (2014, p. 345) the new law did not manage to live up to the previous reform-ideas or the international standards. In fact the contrary happened and juvenile justice had been shifted towards the adult penal justice. It must be noted, that creating a separate juvenile justice that differs fundamentally from the adult jurisdiction both in its values and institutions has never been considered in Hungary. Ligeti (2006) proposed to adopt a separate Juvenile Act, which would have contained the exceptional rules compared to those applicable for adults in the general procedure. According to her plans neither the judges nor the prosecution for juveniles would have become autonomous institutions, and the range of the available punishments and measures would not change dramatically. Nevertheless, the fact that this concept is often referred to as the one that could have "reinstated" the separate juvenile justice to the Hungarian justice system shows the lack of flexibility in theoretical penal law and the lack of "criminological imagination" in law making.

The *general philosophy* of the Penal Code of 2012 is focusing on ensuring 'law and order' and puts any welfare consideration aside. Effectiveness in ensuring public order is the most important goal of the system, which must be continuously asserted in political statements. The main emphasis is on community safety, and people's experience of safety, therefore the most spectacular instruments are characterized by the zero tolerance. The broad system is characterized by responsibilization of the offenders and (in case of children) their parents. Young offenders are bearers of responsibilities and obligations similarly to adult offenders (Cavadino & Dignan, 2006), therefore there is no need for specialised judiciary or prosecutors who might better deal with child offenders and who are able recognize their need besides their deeds. Formal control by justice authorities is seen as a crucial element, therefore the role of the probation workers is currently transforming from substantive support to pure supervision of offenders, and even non-offenders in case of preventive supervision (see in detail in Chapter IV and in Kerezsi et al., 2015). Besides the new approach in justice, child offenders are still often placed in (special) residential care by child protection authorities, and stay in care often until their 18th birthday (Anghel et al., 2013). Despite this commonly known fact, there is little attention paid to the improvement of these institutions and train staff to be able to deal with children who have behavioural problems. The lack of appropriate training and monitoring shows in the often exceptionally severe cases reported to the Ombudsman of Fundamental Rights every year (e.g. AJB, 2013, pp. 147-149; AJB, 2015a). Although the practice turns a critical eye on the new Penal Code, and most importantly the MACR lowered to 12 years, it is difficult to see yet how the judges in general deal with the transitional period both in terms of gaining experiences and special skills in understanding both juveniles and the requirements of the new law (Czédli-Deák, 2015; Halmosné, 2015).

2. The *understanding on client behaviour* in the Hungarian juvenile justice has been determined by the socialist ideology until the political transition. Despite the careful theoretical attempts to open doors to sociological and criminological theories of crime and criminal behaviour, this hardly affected the work and approach of the strict justice

institutions. The rupture between theory and practice is still noticeable in the juvenile justice system. While theoretical works often approach juveniles as vulnerable persons, pointing out those areas of intervention which would serve the best the child's interests (Rosta, 2014), the judicial practice still seems to favour applying the 'good old' suspended imprisonment as a tool of assumed deterrence, instead of e.g. restorative alternatives (Lévay, 2016). Judges try to find the sense in punitive regulatory elements rather than protesting against them through denial of application on the basis of developmental and human (or children's) rights criteria (Czédli-Deák, 2015; Halmosné, 2015). In the past two decades there were significant efforts made to reform criminal policy in Hungary and to modernise the understanding on offending and antisocial behaviour, and within this the official approach on child- and juvenile criminality (see for instance in the National Crime Prevention Strategy of 2003 and 2013), but the global financial crisis of 2007-2008 and the conservative political turn hindered the emergence of this approach. Due to the crisis, the question of the new Penal Code has suddenly become of minor importance, which provided the opportunity to the next, conservative, government to start a drafting procedure and create a penal framework that reflects to the assumed need for the restoration of law and order rather than support in rehabilitation and resocialisation. The understanding on client behaviour in the juvenile justice system in Hungary is asymmetric nowadays: in certain questions, such as the support of child-friendly interrogation and justice procedures a broad consensus had been reached in the past years. This shows the willingness of justice professionals to recognize potential vulnerabilities, and pay special attention to childhood in procedures. On the other hand the past years' developments in juvenile justice legislation led to the responsibilization of children and to a shift towards purely deterrent and repressive practices, not only in case of the most serious offences (such as in case of MACR), but also regarding petty crimes (Kerezsi et al., 2015; Pálvölgyi, 2014; Dávid, 2014). Unfortunately, these new rules pay attention exclusively to deeds, and disregard the needs of child offenders. During the drafting of these rules, the results of scientific research, children's rights and evidence-based methodologies were not taken into consideration, therefore no forward-looking approach shall be claimed in the understanding of client behaviour.

3. The main *purpose of intervention* has been unstable since the political transition. Kerezsi and Lévay (2008) identified four periods in the Hungarian criminal policy based on thefour most significant amendments of the Penal Code of 1978 and approach on crime of the governments after the transition:

   1) The period of decriminalisation (from 1993) after the communist regime, when the main purpose of the system was to provide relative freedom to the judiciary and new treatment options became open for specific groups of offenders.

   2) The period of 'toughening up' (from 1998), when the main purpose of the justice system became to apply punishments and less attention was paid to treatments and alternatives.

   3) The period the 'twin track' policy' (from 2003), which turned to the principle of less punishment again, and increased the freedom of judges compared to the previous system.

4) The period of restorative orientation (from 2006), when mediation had been introduced and later improved as a procedural and substantial alternative in the Hungarian justice system.

In this classification the fifth period may be reckoned from 2010 when the first laws came into force that 'reformed' the division of judicial competences and cases and allowed harsh justice reaction to minor offending and antisocial behaviour. The second turn in this still ongoing period happened in 2012, when the new Penal Code came into force. The new Penal Code and the amendments of the other related laws served the implementation of the old-new policy on emphasizing 'law and order', and applying tough penal response, retribution and deterrence to criminality, both in respect of minor and more serious crimes.

4. The *objectives* of the system are the maintenance of 'law and order'. Procedural laws have been reformed in order to speed up judicial procedures, and the Penal Code had been re-codified in order to create more deterrent provisions for everyone who 'considers committing a crime'. The possibility to apply life imprisonment without eligibility of parole had been raised to constitutional power in the new Fundamental Law of 2011 (Article IV (2)).[32] Although the latter regulation does not concern children or juvenile offenders, it shows how 'law and order' is emphasized not only in public policies, but on the highest level of constitutional regulation. The primacy of law and order shows in the juvenile justice as well: when the Parliament abolished the exclusive jurisdiction of regional courts in 2010 in order to speed up the procedure, it also decided about putting juvenile offenders in hands of inexperienced judges and clerks without any special education on dealing with children and assessing their actions in light of their age. With its legislative action the Parliament voted for maintaining 'law and order' before providing expertise and warrants of children's right.

   Similarly to some Western-European jurisdictions risk-management became an issue in the Hungarian juvenile justice system in the past years. From 2015 probation officers are obliged to use a risk-assessment tool to determine the risk of recidivism, for instance when advising on the imposition of preventive supervision. The new tool has not been welcomed without critics in the profession. Although the majority of the probation officers agree with the goals of the tool, there are concerns about its consequences to the workload, as well as the speedy implementation (Kerezsi et al., 2015).

5. The *tasks* of the system are exercising and expanding control through agencies of social support and law enforcement. There are various institutions in the juvenile justice system, which have primarily control-function, such as preventive supervision, probation, supervision by a probation officer, confinement, education in a reformatory institution

[32] In the case László Magyar v. Hungary the European Court of Human Rights the adjudged the violation of Article 3 on the prohibition of torture or to inhuman or degrading treatment or punishment in a case of the life imprisonment excluding parole of Mr Magyar: "In the Court's view, the regulation does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might be […]. The Court is therefore not persuaded that, at the present time, the applicant's life sentence can be regarded as reducible for the purposes of Article 3 of the Convention."

and imprisonment. These punishments and measures are relatively frequently applied: in Hungary about the half of the registered cases are dealt with by the court, and about one third of the sentences impose imprisonment (Lévay, 2016). Although most of the imprisonment sentences are suspended, this proportion still seems to be extremely high. Alternatives, such as available restorative techniques or community work are applied rarely (Csemáné, 2010).

As mentioned before a significant proportion deal of youth offenders end up in child protection (Anghel et al., 2013). This is problematic because there is lack of specialist knowledge on treating child offenders in the child protection system, which leaves their needs and problems undetected and unaddressed. According to Anghel and colleagues there are communities which are "lacking entirely psychological, psychiatric or counselling support with recovery from abuse, trauma, suicideattempts, mental health difficulties, or learning disabilities. This affects not only the children in care or in the community who might need this type of services, but also the child offenders (over 4,000)(Chief Prosecutor' Office, 2012) of whom a growing number areaccommodated in regular residential homes until 18, and where staffare not trained in rehabilitation or any other methods".

6. The *legal construction* of the Hungarian juvenile justice system is very similar to the build-up of the Finnish system. The juvenile justice system is part of the general justice system, where the juveniles follow the same procedural steps like adults, only with slightly more guarantees. According to the Penal Code in effect a child is considered to be juvenile if he has reached 12 years, but have not reached 18 yet (Section 105). The punishment or preventive measure applied against a juvenile person aims to help him forward in the right direction of development and to support him/her in becoming a useful member of the society (Section 106(1)). In order to serve this goal, the Penal Code expressly highlights the primacy of applying measures rather than punishments (Art. 106 Section 1), and prohibits the application of punishment against children under 14.

The police do not have the power to divert cases formally, although most of the diversion in minor cases, such as the possession of drugs committed to only a small amount, actually happens on police level. Children are eventually arrested and heard by the police, and the police usually advise the prosecutor to suspend prosecution for a year, or until the child completes the at least half year long intervention programme, where he enters voluntarily. In this case the child never meets the prosecutor, only receives his decision about the dismissal.

Formal diversion is ordered by the prosecutor. There are multiple grounds upon which he may decide about the diversion of the case:

1. The prosecutor may suspend the indictment if the crime is punishable with at most 5 years of imprisonment, and from the case it seems that the general goals of the penal laws may be reached without punishment. A probation officer supervises the juvenile during the term of the suspension, and its accomplishment leads to dismissal.
2. The prosecutor may – if both the victim and the offender agree – refer the case to mediaton. The offender is bound by the successfully concluded agreement, and if

he breaches the terms, he may be subject of court trial. The referral-opportunities are by the law: mediation can only be applied in case of certain minor crimes (punishable with at most 3 years of imprisonment), and the and the active regret of the offender does not always lead to full liberation from the charges (if the offence is punishable with at most 5 years of imprisonment).

If the diversion is not applicable, the prosecutor refers the case to court. In general the local court deals with juvenile cases, although the most serious crimes have to be referred to the regional courts. The court of first instance may be a single judge or (in rare occasions) a judicial council of a judge and two lay panel members. One of the lay panel members has to be a pedagogue.

The sanctions that may be applied by the court are listed in the Penal Code. All criminal sanctions applicable to any case are listed in the General Part, while the rules applicable only in juvenile cases are summarized in the Chapter XI under the title Provisions Concerning to Juvenile Delinquents. The applicable preventive measures are the following: (1) reformatory education in juvenile institution; (2) reprimand; (3) probation; (4) restorative work; (5) supervision; (6) confiscation; (7) confiscation of the assets; (8) elimination of electronically stored data (9) treatment in a psychiatric institution. The only one additional measure in juvenile cases is the reformatory education in a closed juvenile institution (Section 108(1)).

The applicable punishments are the followings: (1) imprisonment; (2) confinement; (3) community work; (4) fine; (5) disqualification form driving vehicles; (6) expulsion; (7) prohibition on entering sport events; (8) ban on entering certain areas. The minimum term of the imprisonment is one month, while the maximum term differs according to the age of the offender: for those who are under 16 at the time of the crime the maximum term is ten years, while for those who are older than 16 year the maximum term is 15 years. Community work may be applied only above 16 years with regard to the legal restrictions to child labour, according to which children are only allowed to work after their 16th birthday. Furthermore, according to the legal regulation on public education, this age is also the upper limit of the obligation for participation in public education.

This legal construction is worth to compare with the Finnish system in order to make it clear why one belongs to the justice model and the other represents the control model. Both models build on the features of the *justice model*, in the sense that neither of them had built separate systems for juveniles, but they are part of the adult criminal justice only with some restrictions aiming to apply more lenient punishments with regard to the age of the defendant. Child protection or social protection is not involved to the work of juvenile justice, but they are strictly separated from it. However, referring to Chapter I, where the institutional categorizations in international literature had been broadly described, it is clear, that *models* of juvenile justice do not only describe *legal construction,* as we have seen in the binary model, but attempt to analyse other systemic elements, such as leading philosophy, objectives, key actors, etc. As it has been mentioned in Chapter I, categorization of systems depends on the context examination. When looking at the historical development British penal strategies, Cavadino and collegues differentiate between five *approaches* (2013): welfare justice, minimum intervention, restorative justice and neo-correctionalism. 'Neo-correctionalism' or focus

on 'control' do not describe one specific systemic build-up, which is the same in every country belonging to this group, but rather trace out the political-philosophical will behind the direction of developments. Neo-correctionalist policies assume that individuals are rational actors, responsible for their behaviour, and aim to create public safety through legal threats such as harsh punishments, zero tolerance, etc.

Generally speaking it is obvious, that one country cannot have two justice systems, not even if they are dealing with well-separable groups of people (e.g. children and adults). Penal policies and philosophical ideals apply to whole justice systems, which include both juvenile and adult institutions. In this regard juvenile justice may only become a slightly less punitive exception in a punitive system, or a slightly more permissive part in a welfare system, but never fundamentally different from the adult justice of a country. This connection emerges even more in a system, where institutions dealing with youngsters do not differ from those dealing with adults. If the penal policy of one country is dominated by goals and instruments generally considered to be neo-correctionalist, the juvenile justice of this country will necessarily shift towards the direction of a more punitive and less permissive face. In philosophical terms this system may be called the most punitive, even though it may have separate juvenile justice, such as the United States (Pruin, 2010). However, while neo-correctionalist policies and objectives may be the same in Europe as they are in the US, provisions materialize differently in Europe, practically on a more lenient way. This, however, does not mean that countries like Hungary shall not be labelled as neo-correctionalist countries when they show the same objectives. Table 15 presents the comparison between the Finnish and the Hungarian justice system in detail.

Table 15. Comparison of the philosophies regarding to juvenile justice in Finland and in Hungary

	CRIME CONTROL/NEO-CORRECTIONALIST (HUNGARY)	JUSTICE (FINLAND)
General description	The leading ideology is focusing on 'law and order', and thus efficiency in restraining crimes is the most important measure of the system. The main emphasis is on community safety, and people's experience of safety, thus the most spectacular instruments are characterized by the zero tolerance. The broad system is characterized by responsibilization of the offenders and parents. Young offenders are bearers of responsibilities and obligations (Cavadino & Dignan, 2006). In philosophical terms this system may be called the most punitive among all models, even though it may have separate juvenile justice (Pruin, 2010).	The philosophy of juvenile justice in this model does not differ essentially from the basic ideas of adult justice systems: free will and accountability, and focus on deeds. Children in conflict with the law appear as responsible agents, but also bearers of rights who may be adjudicated in due process. This model of juvenile justice may easily lead to 'just deserts' policies in case of youngsters. Or, as it shows in case of Finland, it may lead to a perfectly welfare-oriented system where only few children are dealt with in justice (Cavadino &Dignan, 2006, Pruin, 2010).
Legal construction	Justice-faced without separate juvenile justice system	Justice-faced without separate juvenile justice system

Political background	Conservative (Cavadino et al, 2013)	Welfare
Objectives	Maintenance of law and order (Winterdyk, 2002)	Respect individual rights, due punishment (Winterdyk, 2002)
Direction	• Counter-reformation, punitive • Evidence-led, improving effectiveness • Responsibilization • Early, progressive intervention (Cavadino et al, 2013)	• Due process • Maximizing protection of Children's Rights • Diversion of juvenile delinquents from justice
Typical instruments (in case of the mode country)	1. short sharp shock 2. zero tolerance 3. curfew 4. mandatory minimum sentencing 5. naming and shaming 6. criminalization of undesired behaviour 7. control over parents (Muncie, 2008)	8. traditional set of criminal punishments (in Finland in particular: fine) 9. restorative justice instruments (mainly mediation)
Purpose of intervention	Protection of society, retribution, deterrence both in case of antisocial and criminal behaviour	Sanction criminal behaviour
Specific in the country	• High rate of incarceration/deprivation of liberty in juvenile cases • High rate of incarceration in adult cases	• The number of incarcerated juveniles is almost zero (However Pitts and Kuula estimate that on welfare basis Finland may remove from home andinstitutionalize more children pro rata than do England and Wales. (Muncie, 2008)) • Low rate of incarceration in adult cases (Pratt, 2008)

7. The *key agency* of the Hungarian juvenile justice system is the (juvenile) court, because this is the institution, where decisions are made about the future of children. As mentioned above, about half of the registered offenders are convicted by the court (Lévay, 2016). This relatively high proportion may be a result of a number of problematic characteristics of the system, such as the lack of formal alternatives at the police level, the lack of interest in mediation at the side of the victim, or that the prosecutor does not dare to take the responsibility for the case and the offender, while the court, as the final forum of justice, has to take it eventually. Probably training and active dissemination of information on the available methodologies among justice professionals could open the doors to alternatives other than suspended sentences. With regard to the lack of available research on this matter, any further explanation would be only conjecture.

8. As it is mentioned under the previous point, the key agency of the Hungarian juvenile justice system is the court because of its power to determine the future of juveniles. However when it comes to *key personnel* the range of relevant actors becomes broader. Firstly, police officers are important actors, because they are those who have potentially the most contact with the juveniles. In the Hungarian juvenile justice system police

officers have widespread rights in intervening into children's activities and enforcing their 'obligations'. Since 2012 police officers are allowed to be hired by schools when their presence is decided to be necessary by the school director. Beyond being active in preventive work they may eventually refer cases to the police. Police officers may as well work in preventing truancy, as they are allowed to escort truant children back to school, even if they are younger than 14 years (Section 28 (1) point 18 and Section 28(6) of the Act CXX of 2012). Although truancy is not a "status offence" in Hungary, sanctions (that are fines in practice) may be imposed for administrative offences against the parents of truant children after being absent 50 hours from school or 20 hours from day care without excuse (Section 247 of the Act on Administrative Offences of 2012). Furthermore, police officers are responsible for the informal, and as mentioned above in practice often even formal diversion, however they do not have the power to apply informal diversion with conditions as it happens in Belgium.

Secondly, lawyers form another important group of key actors in the Hungarian juvenile justice system, where most juvenile offenders are dealt within judicial procedure. Judges, prosecutors and attorneys have the formal role of protecting the rights of children in a due procedure. Since lawyers have key role it would be an essential requirement that they gain specialised knowledge within the legal curriculum or at least during their training period at court, at the prosecutor's office or at the bar association. Since in Hungary neither the judges nor the prosecutors have to be specialised to juvenile cases by law, and attorneys who deal with juvenile cases are rarely educated to be specialists in juvenile justice, we have to conclude that although being key actors, lawyers are not obliged to prepare to the task of dealing with adolescent children and deciding about the appropriate punishment or measure. The consequences of this characteristic show in the sentencing practice and the typical instruments applied.

9. The *typical instruments* of the system are the supervisory measures. The agents of the system have the opportunity to order supervision in institutions or outside of them. Table 16 shows the currently available forms of supervision as according to the Penal Code and the Act on Administrative Offences.

Table 16. Forms of supervision in the Hungarian juvenile justice system

	INSTITUTIONAL SUPERVISION	NON-INSTITUTIONAL SUPERVISION
ADMINISTRATIVE OFFENCE	confinement	preventive supervision by a probation officer
CRIME	**pre-trial**	
	pre-trial detention - in a reformatory institution - in prison	preventive supervision by a probation officer
	probation	
		probation supervision
	conviction	
	placement in a reformatory institution	supervision by a probation officer in case of a suspended sentence

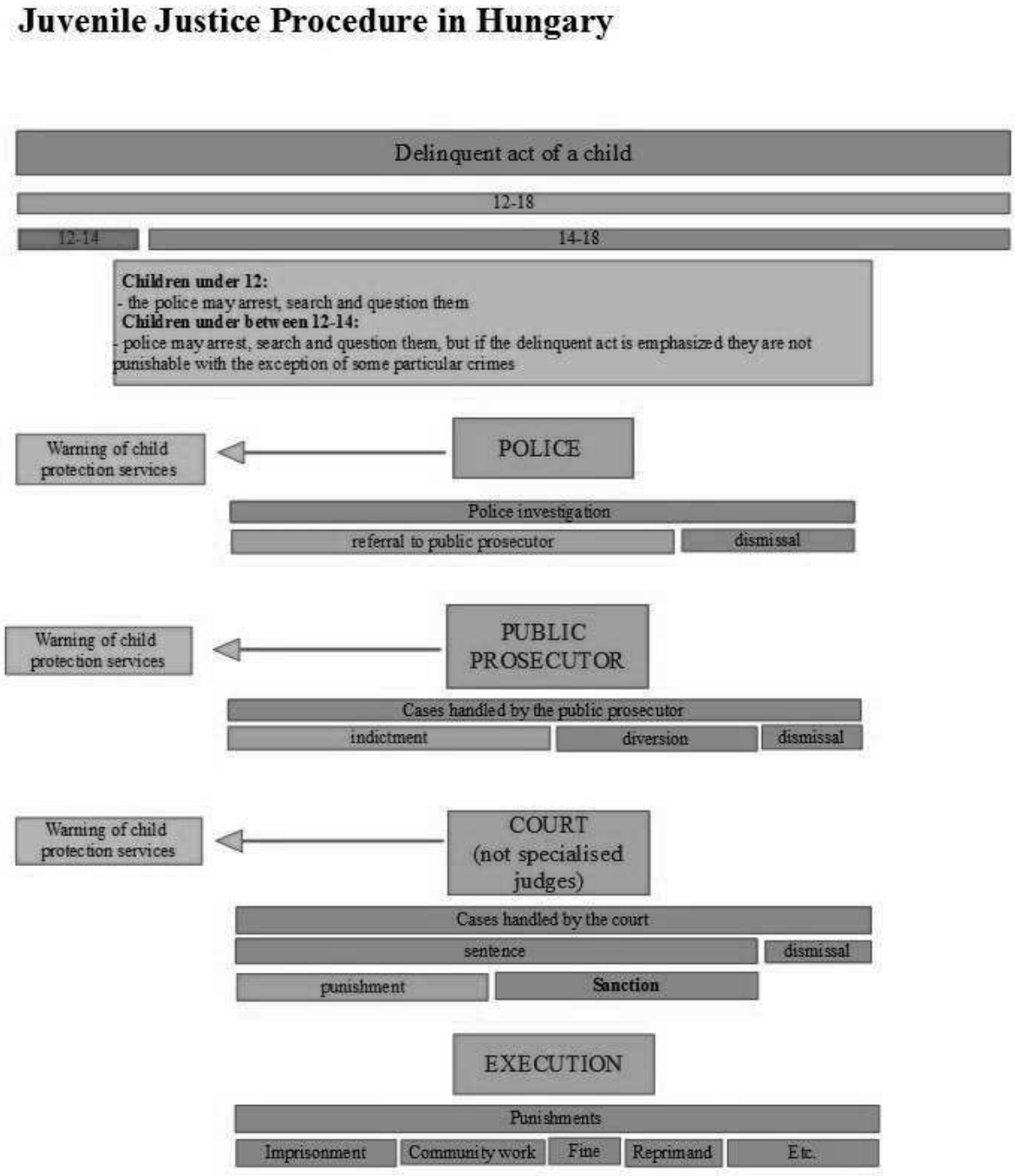
	imprisonment	supervision by a probation officer in case of conditional release

Assuming that the sentencing practice in juvenile cases did not change considerably since the last prosecutorial report in 2013 (Legfőbb Ügyészség, 2013), it may be concluded, that about the 25% of all convicted juveniles receive imprisonment sentence, however about 75% of these are suspended (Table 23). In 63% of the cases the court applies measures against juveniles, 88% of which are probation (Table 24), while 5-6% are placement in reformatory institution (Table 28), thus about 94% of the measures are directed to strict supervision of juveniles. About the preventive supervision and confinement for administrative offences there is no available officially published statistical data.

Although the system aims to follow and control the "risky" population as much as possible, in practice it puts too much burden on the institutions, which exercise control. As it shows in Table 16, even those children may be supervised by probation officers who did not commit any crime according to the Penal Code if preventive supervision is ordered. Due to the numerous tasks assigned to them by the law, probation officers continuously have to face challenges because of case overload and the ever-changing scope of duties (Kerezsi et al., 2015). The case overload is not only regrettable because obviously a great number of youngsters could have received a more suitable and effective measure in an ideal system, but also because of those offenders in need of support who cannot get enough attention and help from the probation worker.

As the statistics show, the number of actual prison sentences and placements in reformatory institutions are not dominant in the system, and although Hungarian prisons are overcrowded in general, this is not the situation in juvenile facilities (Csemáné, 2010; AJB, 2015). In addition, in order to serve the better re-integration of prisoners to labour and society a number of programmes have been organised in the Hungarian detention facilities lately, which were focusing primarily on the education and training of young prisoners. However, beyond these truly essential trainings, there is still less attention on the individual in detention. There are some pilots and international programmes in Hungary, which aim to implement intervention programmes that improve behavioural patterns and individual skills (e.g. the implementation to MST, EQUIP, CBP and STARR), however these are in the elementary stage yet (Kovács, 2013). In this respect – similarly to the practice of other countries – the civil participation and the co-operation between justice institutions and the civil sector seem to be promising. However, these co-operations do not solve the problems caused by the lack of competence in contemporary rehabilitative practices and the most of all the lack of sufficient financial resources in this field. As Kovács argues, only these could give rise to the spreading of rehabilitation-oriented practices in prison-facilities and result in more effective institutional treatment of youth offenders.

Figure 10. Juvenile justice procedure in Hungary



IV.7. Conclusion

The detailed analysis in this Chapter shows that approach, policies and the actual methods used to educate, re-socialize and punish youth delinquents vary significantly among the youth justice systems of Europe. Similarities and differences between the systems appear to lack consistency. Some systems show similarities, but as expected, it is not a typical pattern in juvenile justice that the geographic location has decisive influence on the common characteristics of the systems. Although this statement may be valid when analysing Nordic countries (Lappi-Seppälä, 2011), differences between e.g. the systems of the Netherlands and Belgium would disprove such an argument. According to Tonry and Chambers (2012), common tendencies are also dependent on the cultural values: "People in countries characterized by highly individualistic and moralistic cultural values are more likely to view youthful crime as sign of individual moral failure, to favor formal juvenile court processes and low age limits of criminal responsibility, and to place greater emphasis on punishment. People in countries characterized by less individualistic and more welfarist cultural values are more likely to see young offenders as troubled, to attribute wrongdoing to social and economic influences, to favor greater reliance on child welfare and higher ages of criminal responsibility, and to place less emphasis on punishment" (Tonry & Chambers, 2012, p. 888). However their statements appears to be true for the treatment of the juvenile population under the age of 16, serious concerns may be raised when looking at the procedural arrangements and the actual intervention addressing older juveniles. The general conclusion based on the above systematic analyses may be that the older the child was when he committed a criminal offence the more likely it is that he will be treated as an adult and receive a disproportionately high and repressive punishment. The rupture between culturally determined rather punitive or rather welfare approach and the primacy of repressiveness lies in globally transmitted perception of 'dangerousness', and the 'risk' it represents to other individuals and the society as a whole. Further analysis on this question will be presented in the Chapter VII (Conclusion), here I only would like to highlight, that this phenomenon might be understood as an important characteristic that has influenced practically all models in the past decades.

Juvenile justice systems have been analysed through the examples of actual countries that represented six ideal typical models of youth justice. Although all juvenile justice systems of Europe could have been analysed separately, this method had been chosen in order to simplify the analysis to a level where typical patterns can be explained, while the analysis as a whole remains transparent. The most important advantage of using models is that systems can be classified based on their most significant similarities, disregarding the differences that are minor, or less important from the perspective of the outcome. The significant elements, which establish the classification of a system as belonging to a generalised scheme differ in case of each model. While in the *justice model* the most important area of investigation should be the legal build-up together with procedural guarantees and its similarities to the adult system, in case of the minimum intervention model the actual legal build-up of the system might only be important in order to show which (justice) authorities are entitled to decide about intervention. At the second model the decision-making procedure and the role of the practitioners shall be emphasized, because they are responsible for enforcing the ultimate goal, namely that no intervention is applied in cases where there is no express need for it.

The above analyses proved the validity of the need for multiple models:

1. Starting from the turn of the 20th century there were typical trends, which influenced all European countries or well-separable groups of them. These shaped the countries to different directions. As the first step countries established juvenile justice systems, making a choice between keeping juveniles within the justice system or creating space for juvenile justice within the child protection. This genuine choice determined how the systems dealt with new trends. Changes in general philosophy, (legally determined) institutions and methods used shaped these systems towards multiple models over time. Justice-based systems either remained strict and consequent in applying justice-principles (e.g. Finland and Hungary), or became more flexible and cooperative with welfare (e.g. the Netherlands and England). Welfare-systems either developed connection with justice (e.g. Scotland), or they remained formally in welfare, but leaving room to transfer of children to the justice system (e.g. Belgium). In case of welfare-oriented systems, the orientation towards justice in the consequence of the need for procedural guarantees that shall be provided for all people who committed a crime in the respective country.
2. Along the political trends, and as a result of cultural values at least two extremes have developed, which shall be mentioned apart from the others: the model of *minimum intervention* and the model of *crime control*. The main characteristic of these is not their legally considered build-up, but the orientation in policy. They represent two extremes among countries in the sense that they use the very opposite of each others' strategies to reduce juvenile delinquency: the minimum intervention model would like to prevent further delinquency by avoiding stigmatising intervention, while the crime control model chose to deter and control juveniles instead. Accepting the above as independent models means that the traditional classification of juvenile justice systems based on their legally determined place within public law has been outdated.

Models have been analysed in this Chapter focusing on nine viewpoints: (1) general philosophy; (2) understanding client behaviour ; (3) purpose of intervention; (4) objectives; (5) tasks; (6) legal construction; (7) key agency; (8) key personnel and (9) typical instruments. Each of the elements analysed here reveal an important feature of the given model, while on the whole they create a picture on how the system operates within the framework provided by the model. As closing remarks, hereinafter I will summarize the most important observations on this.

(1) The juvenile justice systems analysed here have grown out from the scientific movement of the turn of the 19th and 20th century, which required that 'juvenile' or 'youth' people are treated differently from adults in the justice procedure. As mentioned above, after this the general philosophies of the countries have been shaped by waives of trends. Among all countries Scotland has registered the most particular development of general philosophy, where an entirely new system had been established based on the recommendations of the Kilbrandon Committee at the 1960's. The Children's Hearing is not only extraordinary because its unusual build-up, but also because it represents a comprehensive set of values and principles which guide professionals and lay people who participate in decision-making about appropriate intervention for juvenile delinquents.

(2) The *understanding on client behaviour* is consistently doubled in the Western-European youth justice systems, depending on the age of the offender and the crime he committed. The general understanding is different in every system, but older children who commit rather serious crimes represent an exceptional group practically everywhere. Although the models certainly apply their general ideal on childhood on these offenders as well, and treat them differently, it does not affect their procedural and legal separation from others, and their rather severe treatment. The justice model, where granting procedural rights is of the highest value, and the control system of Hungary, which is based on a similar legal setting, are exceptions from this doubled understanding in client behaviour.
(3) The *purpose of intervention* is an important consideration in every system, because it has a direct effect on how children are actually seen and treated. In most of the models laws determine that the purpose of the system is to educate or re-integrate juveniles. By declaring this the given jurisdiction justifies the existence of a separate juvenile justice system, and establish the legal need for their different treatment from adults, but does not explain the real content of this statement, namely, *why do young people need reintegration*? The answer to this question is filled in by policy.
(4) The *objectives* that set out by the different systems approach the role of the system from two perspectives. The first is the perspective of the child. Concerning to the child's interests, models that are welfare-oriented highlight the need for children's rights, providing intervention that addresses the child's problems and restoring ties in families (see e.g. the Netherlands, Scotland and Belgium). The second is perspective is the safety of the society. Interestingly, even those jurisdictions which promote the welfare ideal such as Belgium, are likely to consider the safety of the society as an important factor of determining the nature of the intervention, while in the crime control model and the corporatist system of England it becomes the primary consideration.
(5) Risk management – either in order to serve the child's welfare or to serve the communities' safety – have been identified as *task* of the institutions in four countries. In Finland and Hungary it is not expressly a task of the system.
(6) The *legal construction* typically reflects to the main direction of general philosophy as well. An exception from this rule may be observed in Finland, which clearly follows a welfare-oriented policy while in legal terms it upholds the justice model of juvenile justice. In this regard Finland is the best and the worst example for this model at the same time. It is the best example because its legal build-up perfectly reflects to all features that characterize the justice systems: the importance of due process, the use of traditional sanctions, and the key role of lawyers are all present in this system – only children seem to miss. The primacy of diversion to child protection questions the role of juvenile justice in responding to delinquency and makes the impression that Finland, in reality, has a welfare-based juvenile justice system that applies justice intervention rather exceptionally.
(7) – (8) The *key agency* is determined by the system, and the typical sanctions applied. The *key personnel* assigned to do these tasks are less diverse: it usually consists of social workers, psychologists, pedagogues, health care professional or the

combination of these. Practitioners who belong exclusively to justice authorities have been identified as key personnel in the justice-faced countries, like the Netherlands and Hungary. Normally it is the case in countries belonging to the justice model as well.

(9) The typical instruments of a model vary according to model. In the crime control model supervisory sanctions with repressive purpose prevail, while in the welfare model supervisory measures have educational purpose. In Belgium in particular restorative techniques are important as well. Similarly to the Belgian measures, in the modified justice system of the Netherlands the sanction with the educational purpose is the most important. In the corporatist model of England, the rights of the victim are highly respected therefore sanctions that target the victim in person or the community are of the highest importance. In Finland the most typical sanction is child protective intervention, which should normally be welfare characteristic. In Scotland the system intends to expressly avoid intervention, but in if necessary supervision is applied, complemented with a specified training or supportive element.

CHAPTER V

ANALYSIS OF KEY QUESTIONS OF INTERNATIONAL LAW ON JUVENILE JUSTICE

After introducing the general characteristics of the juvenile justice systems of Belgium, England and Wales, Finland, Hungary, the Netherlands and Scotland in Chapter IV, in this Chapter I will analyse the most problematic issues of European juvenile justice systems identified in Chapter III. This Chapter aims to complete the knowledge and further shape the picture on the already introduced systems, and reveal those areas of legislation and practice which are rarely introduced in-depth in large-scaled legal comparisons. The small number of countries analysed in this study allowed me to take a closer look at the juvenile justice systems, and discover their strengths and weaknesses through studying literature in the broad sense, and interviewing academics and practitioners in the field.

The research process of the past years led me to another important conclusion about the phenomenon I like to call the "bias caused by the single viewpoint". This refers to the single viewpoint of the researcher, who examines the multiple fundamentally different justice systems with the preconceptions that stem from personal experiences with and substantial education about one society and legal system. The limited understanding implies that a foreign researcher has to form critical thoughts carefully when dealing with the different 'truths' gained from different sources, because misinterpretation of a certain regulation or practice occurs easily for lack of appropriate knowledge about the interconnected systems of child welfare and juvenile justice in the given country and researcher's own experiences in other systematic concepts and practices. Therefore visitors of a 'new' juvenile system have to take every word and judgement on a particular institution into careful consideration. In addition, comparatively relevant questions must be asked. Is it relevant to ask about the longest available custodial sentence under juvenile law in a system where transition to adult justice system is possible from age 16? Does it make sense to talk about juvenile laws where MACR is 18? Should we not look at the practice of deprivation of liberty in child protection, where most of the child offenders are dealt with in this system rather than juvenile justice? Questions like these occurred to me along my whole research, and even after years of working in this field I am struggling to find the right comparative schemes that would introduce the core problems without any bias caused by the limited understanding and the limited comparable phenomena.

In this Chapter I attempt to draw a clear picture about the most important topics in the European juvenile justice policies. The topics that will be discussed in this Chapter have been selected based on the analysis in Chapter II about the latest concluding observations of the Committee on the Rights of the Child to EU Member States. Based on the previous analysis I will focus on the implementation and practice of (1) the age thresholds of criminal responsibility, (2) the regulation and application of alternative measures, (3) deprivation of liberty of children, (4) dealing with petty delinquency and antisocial behaviour, (5)

discrimination in juvenile justice and (6) the question of special education and training of justice personnel.

V.1. Age thresholds of criminal responsibility and procedure in front of adult court

V.1.1 Minimum age of criminal responsibility (MACR)

The age when children may be charged as responsible actors in the society based on penal law determines substantially the national regulation on juvenile justice. Despite the fundamental importance of MACR, international rules contain vague requirements on the appropriate age limit. Article 40(3) point a) of the UNCRC provides a relatively weak provision on MACR, which requires "the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law". The circumstances or norms on which this presumption shall be based on are not obvious based on the UNCRC. The Beijing Rules, that are standards, thus do not contain binding obligations and narrow this requirement somewhat in Rule 4 about the age of criminal responsibility. Rule 4 requires that "in those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". Although this requirement excludes the establishment of criminal maturity on non-developmental grounds, and indicates that countries shall underpin their general or individual judgement on the criminal responsibility of the child, still do not provide clear indications of a universally accepted 'proper age', and therefore provide wide range of legislative opportunities in this field. As according to the Commentary on this Rule, "the modern approach [on establishing MACR] would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour". The commentary contradicts itself, when adding this rule that "efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally", while on Rule 2.2 it states that a wide range of differences in age limits following from economic, social, political, cultural and legal systems of Member States is inevitable. Nevertheless, Rule 2.2 provides no expectation on age limit, and defines 'juvenile' as a child or young person who is subject of a different manner of treatment. 'Juvenile offender' is defined as a child or young person who is alleged to have committed or who has been found to commit an offence in the framework of the Rules.

Efforts to establish an absolute age limit has been taken by the Committee on the Rights of the Child in the General Comments on Juvenile Justice in 2007. In this document the Committee gives a summary of the range of minimum ages as reported by States Parties, and sets the acceptable limit of MACR at 12, noting that this is age is still too low to be recommended. The recommended age of MACR is between 14 and 16 years, excluding any exceptional regulation that allows judges to apply juvenile law below MACR in case of, for instance, committing a relatively serious offence (point 17). According to the Committee "the system of two minimum ages is often not only confusing but leaves much to the discretion of

the court/judge and may result in discriminatory practices", and is therefore avoidable. The recommended age limit reflects to those research results which, show that children between 11 and 14 are not capable to assist their own defence or even sufficiently understand the consequences of the procedure (Cipriani, 2009, p. 144). Therefore, any accusation of a child aged 12-13 appears to be necessarily unjust with regard to the inability of children to participate effectively in the process. Furthermore, the Article 40(3) of the UNCRC, according to which the legally established MACR separates those children who cannot be held criminally responsible, and those who can be held responsible for crime, does not allow exceptions of any kind. Children who commit offences below this age limit are protected from justice measures by the irrefutable assumption on their lack of capacity to infringe penal law. MACR also establishes a transitional period between childhood and adulthood in the penal sense. This means that children aged between MACR and 18 years can only be subjects of mitigated forms of penal reaction, which are in full compliance with the principles and provisions of the UNCRC. This aspect of the understanding on MACR is particularly important in preventing the practice of transition of juveniles to adult courts.

Cipriani (2006, p. 137) underlines, that "MACR is not just a question of setting and applying an age limit". It is only one part of the extensive and interconnected set of problems in a juvenile justice system that includes the lack of professionals and relevant judicial and protective institutions for children with serious deviances in young age, and the strong dependence on financial opportunities of the given country. Apart from the question of the age limit of responsibility it is also problematic, that international guidelines miss to recommend a minimum age for deprivation of liberty of child offenders, and leave the door open to subjective adjunctions country by country (Liefaard, 2008, p. 169). In this regard significant differences have been found by Killias and colleagues (2012), who investigated European countries' regulations on custodial sentences. Their analysis shows, that custody prior to 14 years is only available in 5 out of 31 European countries. It would be worthwhile to extend this to other types of institutions where the liberty of the child offender is deprived for shorter or longer terms, such as welfare custody or reformatory institutions. Table 17 shows MACR in the countries in the focus of this study.

Table 17. Minimum age of criminal responsibility in Belgium, Finland, Hungary, the Netherlands, England and Scotland

Country	MACR	Doli incapax test	Minimum age of deprivation of liberty	MACR source statute
Belgium	18	-	12 (only secure care between 12-15 years)	Act concerning to the child protection, charging underage people who committed acts which are defined as a crime and the restoration of the damage arisen through this act
Finland	15	-	12 (only reformatory schools between 12-15)	Penal Code
Hungary	14	12-13	12 (only reformatory institutions between 12-14)	Penal Code

Netherlands	12	-	12	Penal Code
England	10	-	10	Children and Young Persons Act
Scotland	8		12	Criminal Procedure Act

The MACR is 18 years in *Belgium*, where it sets the age limit to full penal responsibility, but this does not mean that children under this age cannot be held responsible for committing criminal offences. In principle measures applied under this age shall be protection measures, unless the child is tried by the adult court (it is only possible from the age of 16) and therefore received adult punishment. Thus, technically the Belgian system allows conviction of persons under 18, although only as an exceptional rule. The placement measures applicable within the protection framework are restricted to children who committed a criminal offence above the age of 12. Children under this age may only be subject of a measure that keeps them in their living environment (Defence for Children BE, 2014).

In the *Netherlands* MACR has been set at 12 since 1965 (Section 77a of the Dutch Penal Code; Liefaard, 2008). This means, that children under 12 cannot be prosecuted by juvenile courts, however, it does not mean that children under this age cannot be retained by the police either. In fact, children below 12 can be arrested and taken to police stations for 6 hours (Liefaard, 2008, pp. 377-384). Specialised juvenile judges may try cases of children above the age.

In *England* children can be held responsible for a criminal act from the age of 10 according to Section 50 of the Children and Young Persons Act. Before 1994 this low age threshold was mitigated by the *doli incapax* rule, based on which children between the ages of 10 and 14 could only be convicted of a criminal offence if the prosecution was able to show an awareness on the actor's part that his conduct was "seriously wrong" (Smith, 1994). The doli incapax rule created a transitional period within juvenile years, where immaturity was not entirely taken for granted, however the burden of proof implied the necessity of positive evidence beyond the fact of the misconduct itself. The rule became target of political debates and was finally abolished after the Bulger-case (see under 6.1.2 of this subchapter). The low MACR is persistently a subject of critical comments of various international bodies, including the UN Committee on the Rights of the Child and the UN Committee Against Torture. Despite the critics, the UK Government believes, that “children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions” (The comment of the UK Government in its Fifth Periodic Report to the UN Committee on the Rights of the Child is cited by The Howard League, 2014).

According to Section 41 of the Criminal Procedure Act of *Scotland* „it shall be conclusively presumed that no child under the age of eight years can be guilty of any offence”, however Section 41A about the prosecution of children prohibits the prosecution of a child under the age of 12, as well as the prosecution of such child for an offence which was committed at a time when the person was under the age of 12 years. This legal regulation results in a gap between the minimum age of responsibility and the age when legal consequences can actually be enforced against the child who commit a criminal offence. Children under the age of 12 may be referred to the Children’s Hearing, which can make

decision about the further social assistance for or child protective measure against the family (McDiarmid, 2013). Juveniles between 12 and 18 can be prosecuted for a criminal offence and be dealt with by an adult court if the offence is serious.

The MACR in *Finland* is 15 years since 1889 (Lappi-Seppälä, 2011, p. 205). The regulation does not allow any deviation from this rule. Children who have not reached this age yet may be exclusively dealt with by child protection, while children above this age shall be subjects of the juvenile justice procedure until they become 18 and even after this age until their 21st birthday (Lappi-Seppälä, 2010). This regulation complies with the Nordic standards of MACR (Lappi-Seppälä, 2011, p. 199), as well as the acceptable age limits recommended by the Committee on the Rights of the Child (General Comment No. 10, 2007). Among the countries examined here, Finland is the only country, which complies with the international requirements on the age limits, both in its legal regulation and its practice.

There have been significant changes in the regulation of MACR in *Hungary* in the past years, although unfortunately not towards the better compliance with the international regulation. In May 2012 the draft of the new Hungarian Penal Code had been published providing the lowering of the MACR from 14 to 12 years in case of committing serious, violent crimes, namely homicide, voluntary manslaughter, grave assault, robbery, plundering and committing acts of terrorism. The section further provided a variant of the *doli incapax* presumption, according to which measures may only be imposed against a child younger than 14 years if he was able to foresee the consequences of his actions (this is not necessary in juvenile cases in general). Based on the presumption, if a child had been proven to be able to realize consequences of his acts, the judge may dispose 'sanctions' against him, but not punishments. Although most of the sanctions applicable against juveniles cover non-intervention or supervision, there is an opportunity for deprivation of liberty as a measure of last resort: the reformatory education for at most 4 years in a reformatory institution. Despite the objection of the Ombudsman (2013) and numerous NGO's (UNICEF, 2012), the section on lowering MACR came into force on 1 July 2013 together with the new Penal Code. As a response to professionals' doubts on the acceptability of the rule, the official commentary referred to the need of maintaining public order and people's safety. The comment of the Minister of Public Administration and Justice illustrates the controversial nature of the new rules: after the adoption of the law he noted that nobody was honestly satisfied with this rule, and he would be happy if the rules "would be proven unnecessary within two years" (Origo, 2012). The rule of the new Penal Code is problematic for multiple legal and pragmatic reasons:

- 12 years of age became the exceptional MACR, which appears to be bottom limit of the acceptable MACR, and recommended to be increased up to 14-15 (CRC General Comment Nr. 10, point 16). The Committee on the Rights of the Child expressed its worries about the new provision, and urged Hungary to "take measures to increase the age of criminal responsibility from 12 years back to 14 years even for the most serious crimes" (CRC/C/HUN/CO/3-4, 2014, point 57 (b)).
- The exception based on both gravity of the offence and *doli incapax* presumption of the law contradicts the above mentioned recommendations of the Committee on the Rights of the Child.

- The juvenile justice system was not prepared for the changes of the age limit. The justice personnel who had to deal with the new cases, including police officers, prosecutors, and (local) judges did not receive training on the proper treatment of children of this age, and the reformatory schools, which were supposed to receive 12 year olds and treat them among older adolescents, did not have the human or institutional capacity to ensure the safety and appropriate treatment of these children.
- The unchanged criminal procedure is another problematic issue, particularly regarding the rules on pre-trial detention. According to the law, children who committed crimes can be (or depending on the crime, shall be) separated from their family members during the investigation. Considering the general duration of a criminal process, the present law gives the opportunity to the court to take a child away from all of his or her relatives at the age of 12, and restrict their communication for even a year, until the end of the judicial procedure (CRC/C/HUN/CO/3-4, 2014, point 56 (c)).

On the whole, the MACR as it is set in the new Penal Code of Hungary does not fulfil the international requirements on the age of criminal responsibility, which is even more painful if we take into consideration the fact that the previous age limit corresponded to these. The child protective measures, which were replaced by instruments of criminal law seem to correspond to international requirements more accurately than the rules in force. Previously, a delinquent child would be taken away from the family and would be placed in a special, closed child welfare institution. These institutions are designed to serve specific needs of children with serious deviances, and various behavioural problems. The improvement of these institutions would have probably been more accurate and child-friendly than their replacement with justice institutions.

Despite the clear resolution of the Committee on the Rights of the Child on MACR, some still argue in favour of lowering MACR in Hungary. According to Vaskuti (2015), assigning criminal responsibility to a certain age leads to the extremely unjust result that children one day younger than the given age will be treated in the lenient and welfare-oriented child protection, while one day later they may be treated as offenders by the police, and may receive an imprisonment sentence of up to ten years. According to his idea the principles of individualisation and transition could be served the best by separating the ‘age of responsibility’ and the age of ‘punishability’. However the author does not explain further how this would serve the better interest of children, I assume that he refers to a legal construction where the judicial establishment of responsibility does not necessarily lead to the imposition of a punishment or measure under a certain age. In this construction the judicial body could still report the case to the child protective authority proposing relevant educational measures that support the child in recognising ‘sin’ and its consequences. He further argues that in some cases these age limits may be the same, for example in case of the most serious crimes against life, when even children of a younger age shall take the responsibility for their actions.

V.1.2. Procedure in front of juvenile and adult courts

As it is pointed out in Chapter IV the procedure that deals with older adolescents and/or serious offenders varies among the justice models as much as the treatment of children

around the lower age limits (between 8 and 14 years). The policy regarding this group does not entirely depend on the justice- or welfare-orientation of the system or the lack of specialised institutions for the age group. Some jurisdictions simply assume that children who have reached a certain age and/or committed "adult" crimes are not necessarily entitled to be handled as children, but more as adults. Regarding to this practice the Committee on the Rights of the Child has stated its position clearly, when declaring the States' obligation to apply the UNCRC universally, to every child who has not reached the age of 18 yet (General Comment No. 10, point 20). Accordingly, juvenile laws, including both material and procedural rules, which guarantee those rights detailed in the UNCRC, must be applied to children between MACR and 18 according to the Committee, regardless to the crimes they committed. Therefore the Committee recommended to States Parties, who limit the applicability of juvenile laws for children under 16 or lower, or allow the transfer of children above a particular age limit to adult court, to review and change their laws (point 21). There are two main problems with trying children in front of adult courts: on the one hand the violation of their procedural rights becomes more likely if they are tried in front of a court that deals with juvenile offenders only occasionally instead of a specialised youth or juvenile court, where judges and magistrates are trained to and experienced in dealing with problematic youngsters. On the other hand a trial in front of an adult court implies that the standards of the legal examination as well as the law itself are shaped to punish and treat people with full capacity and not children. In these procedures (a group of) children may be deprived in their rights to be tried and judged according to rules adequate to their age.

Table 18. Transfer to adult courts in Belgium, the Netherlands, England and Scotland

Country	MACR	Transfer to adult courts	Source of the transfer rule
Belgium	12	16-17	Act concerning to the child protection, charging underage people who committed acts which are defined as a crime and the restoration of the damage arisen through this act
Netherlands	12	16-17	Penal Code
England	10	10-17	Magistrates Court Act 1980; Powers of Criminal Courts (Sentencing) Act 2000
Scotland	8	12-17	Criminal Procedure (Scotland) Act 1995

The Netherlands and *Belgium* both allow the opportunity to the judges to transfer juveniles of 16-17 to adult courts. Both the Netherlands and Belgium made reservation to Article 40 when they ratified the UN Convention on the Rights of the Child. The UN Committee on the Rights of the Child has repeatedly urged both countries to withdraw the reservations, and take effort to fully implement the UNCRC (CRC/C/BEL/CO/3-4, point 10; CRC/C/NDL/CO/4, point 7). The two systems show important similarities, although the general face of their 'juvenile justice' is very different (Weijers, Nuytiens & Christiaens, 2009). As according to the amendment of 1965 to the Dutch Penal Code, when deciding about the transfer of 16-17 year old juveniles in the Dutch system, the judge has to take into consideration the personality of the offender besides the seriousness of the crime. In Belgium

the seriousness of the offence and the personality of the offender are not cumulative conditions for the transfer. The transfer rule of Section 57bis of the YPA states that if the child accused of an act deemed to constitute an offence before the Youth Court "is aged 16 or more when the act was committed and that the juvenile court considers that care, preservation or educational measures are inadequate, the judge may relinquish jurisdiction through a reasoned decision and remit the case to the Public Prosecutor's Office for the purpose of prosecution" (Defence for Children BE, 2014, p. 23). Although this rule meant to diminish the severity of the system at the time of the amendment, it lets the possibility of transfer open to the judiciary, as well as the opportunity of applying life imprisonment.[33] The latter possibility had been prohibited rather late: in 2006 in Belgium (Weijers, Nuytiens & Christiaens, 2009) and in 2008 in the Netherlands (Cleiren, Crijns & Verpalen, 2014, p. 555), reducing the maximum of imprisonment of children to 30 years. This exceptionally long maximum term is rarely mentioned in comparative reports, because it is not regulated by juvenile law, but adult law. The alternative punishment under juvenile law in the Netherlands is a maximum of 2 years of imprisonment, which makes the somewhat delusive impression that the Dutch juvenile justice system is fairly lenient and welfare-oriented.

It is a common argument in favour of the transfer rule, that this is a good option in those cases where no suitable measure is available within the juvenile system. According to the safety-argument, the risk of re-offending requires locking up the juvenile offender, and applying a repressive sanction with regard to the seriousness of the offence. In this case the use of adult law may be more appropriate than juvenile rules. It is further argued that the use of this rule is strictly controlled by judicial practise, in fact, it is a relatively rarely used legal possibility. Weijers and colleagues (2009) did not report unequivocally positively about the actual application of the transfer rule in 2009: however the proportion of transfers among all cases declined from 17% to 1,2% between 1995 and 2004 in the Netherlands, the absolute number shows increasing number of cases (from 7,798 in 1998 to 11,584), with significant disparities among the different provinces of the country. The situation was not much better in Belgium, where 3% of all cases had been transferred to adult court at the time of the study. Provincial disparities were significant, but the most significant difference compared to the national average proportion had been produced by the Youth Court in Brussels which was responsible for 47,1% of all transfers. Children transferred to adult court were mainly boys. According to Christiaens and Nuytiens (2009, p. 135) most of the boys transferred to adult court before 2006 were engaged in "street crimes", such as burglary (35,9%), and aggravated theft (21,9%), and only a small share of the transferred juveniles have committed serious violent offences. The amendment of 2006 restricted the application of the transfer to serious offences, such as rape, aggravated assault, aggravated sexual assault, aggravated theft, (attempted) murder and (attempted) homicide. At least one previous youth measure applied for the child became the condition of the transfer, however this may also be a protection measure that did not respond to delinquent behaviour (Christiaens and Nuytiens, 2009). Nevertheless, transfer rules are not only problematic because of the possibility to try and

[33] In the same year as in the Netherlands the age of the upper age limit of childhood in penal sense has been raised in Belgium from 16 to 18. This led to the legal regulation that allowed the transfer of the most serious offenders between 16 and 18 to be transferred from the Youth Court to the adult court

punish children according to adult rules, but also because of the ambiguous legal basis of the transfer itself. In the Murat D. case (Gerechtshof's-Gravenhage, LJN AR8112, 23 December 2004) in front of the Court of Appeal of The Hague the judge requested multiple psychological reports to decide whether the adult law is applicable for the defendant. The psychological reports revealed that the 16 year old boy, who was accused of shooting and killing his teacher, was on the developmental stage of a 12-14 year old child. Despite the fact, that the juvenile's incompatibility with the adult law was obvious from the reports, the court decided to apply adult rules with regard to the personality-disorders that could not be treated properly within at most 6 years of juvenile treatment measure (PIJ-maatregel) (Berger, 201, pp. 903-904). In another case a 17 years old boy had been transferred to under adult rules and sentenced to 18 years of imprisonment by the Court of Appeal in Amsterdam (Gerechtshof Amsterdam, LJN BL9992, 2 April, 2010). The court applied adult law despite the advice of the psychological expert to inflict juvenile treatment measure, with regard to the need to protect the community (Berger, 2012, p. 904). The lack of compatibility of the child's personality with the adult system was established by professionals in both cases, and probably also in a number of other cases, but the suggested procedural consequences were easily left out of consideration by the judges. The contradiction between the (psychological and legal) arguments and results suggests, that transfer rules, even in case of older juveniles, hold a great risk of unfair and inappropriate treatment of children.

Conclusively, it seems that the transfer rule holds significant dangers. Most importantly the regulation allows courts to implement discriminative practices, putting the already vulnerable immigrant children and cultural minorities into an even more excluded position. Uit Beijerse and Swaaningen (2006, p. 67) found, that 'protection of the society' may come into major consideration when using the transfer, disregarding the needs of the child. The recent results of the research of Christiaens and Dumortier on the pathways of 210 youngsters sentenced by adult courts in Belgium show that more than half of them will be recidivists, committing more serious offences than those who received a measure under the child protection laws (D'hondt & Péters, 2016, p. 188). In order to ensure that children do not suffer any harm because of wrong choices of the experts and judges, it would be worthwhile to establish new legal constructions for dealing with serious offenders and older adolescents to replace transfer rules. Whether these are part of the general juvenile justice system or independent from it, it should be guaranteed that deflection from the general rules is only possible in favour of the child and in order to serve his best interests.

The jurisdictions in the United Kingdom approach adult procedure as an alternative compared to the juvenile procedure in the most serious cases or when it seems more appropriate with regard to the age of the child. There is no specific age limit to the transfer, although MACR applies naturally in these cases as well. In *England* children may be tried in the Crown Court instead of the Youth Court under certain circumstances, namely if they are charged with homicide, indecent assault or a serious offence for which a person aged 21 or above could be sentenced to minimum 14 years of imprisonment, furthermore those who are charged together with an adult (Graham & Moore, 2006, p. 72). It depends on the prosecutor whether he finds the case more appropriate to be tried before adult court with regard to any reason. Various legal cases question the appropriateness of the possibility to try children's cases in front of adult courts in the UK. In the Bulger-case two 10 year old boys were

convicted because of torturing and murdering a toddler in 1993. The two offenders were tried at the Crown Court and the trial was open to public, including the media. The children were heard in a process where some elements were modified, and the boys were sentenced to imprisonment of at least 8 years (The Howard League, 2014). After the trial the families of the convicted children appealed to the European Court of Human Rights claiming among other things that the procedure that put made the children subject of public interest and handled the case in an adult court violated their right not to be subjected to inhuman and degrading treatment. The EHCR (T and V v. UK, no. 24724/94 and 24888/94) dismissed the complaint about the inhuman and degrading treatment, and did not question the legality of the sentence either. The only matter the court upheld was the complaint about the right to fair trial that would have required the effective participation of the convicted children. As a result of the ruling of the EHCR a directive had been created requiring adult courts in England and Wales to adapt their procedures for children, and since that a special training for judges and lawyers at the Crown Court had been established (Graham & Moore, 2006; The Howard League, 2014). In another case a 11 year old boy with very low intellectual level had been tried in front of adult court and sentenced to two-and-a-half years imprisonment for attempting to steal a bag from a woman. In this case the EHCR found, that the boy was not able to participate fully in his trial, because he understood neither the role of the jury nor the possible outcomes of the trial, therefore, a trial in front of a specialised court would have been reasonable in his case (S.C.v. UK, no. 60958/00). These cases underpin the above doubts about children's trial in adult courts, where their intellectual capacity is disregarded and therefore their procedural rights are violated.

In *Scotland* the main criminal justice procedure where juveniles are dealt with is the adult procedure, whereas the Children's Hearing system where all juveniles under the age of 16 are dealt with in practice is technically a separate child protective procedure (Dünkel, 2013, p. 161). It is possible to hear child offenders in the Children's Hearing System up until the age of 18, however the transfer to this procedure rarely happens to youngsters of 16-17 years. The majority of children from this age groups are dealt with by criminal courts, where the same procedural rules apply as in the adult process: juveniles are generally considered to be capable of choosing legal representation (although legal aid is available to be able to seek advice from a solicitor), and in the most serious cases they may be tried in the High Court, in front of the 15 members of the jury, where children may be charged with unlimited amount of fine or even life imprisonment (Burman et al., 2010, p. 1173). In order to eliminate the possible harms caused by the adult procedure there were two judicial pilot programmes in the last decade that aimed to incorporate real juvenile courts to the Scottish system. The first was the Sheriff Youth Court in 2003-2004, which was introduced for persistent youth offenders who had reached the age of 16 years. The second project, the Youth Court, aimed to deal with the same group of child offenders "who had at least three separate incidents of alleged offending in the previous six months", and/or represents risk in the community (Burman et al., 2010, pp. 1178-1179). These projects aimed to create a court of transition between the Children's Hearing and the adult courts, the focus of which (integration, education, fast track procedure, promote desistance, etc.) accommodates to the children's rights agenda rather than the adult justice system.

V.2. Alternatives to detention

Alternative measures in the broadest sense refer to all measures within the juvenile justice system and beyond that do not result in deprivation of liberty of the child. Article 37 (b) of the UNCRC requires that "arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". The restricted use of deprivation of liberty implies that there should be alternatives available in the juvenile justice system. In this respect, based to Article 3(b) States Parties shall seek to promote measures for dealing with juvenile delinquents without resorting to judicial proceedings (*diversion*), whenever it is appropriate and fully respecting human rights and safeguards. Furthermore "a variety of *dispositions*, such as care, guidance and supervision orders; counselling; probation; foster care; educational and vocational training programmes and other alternatives to institutional care shall be available" (Art. 4). These alternatives aim to ensure that "children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence" (Art. 4). According to the Committee on the Rights of the Child all children, including recidivists have the right to receive treatment that focuses on reintegration into the society (General Comment No. 10, point 23). The alternatives applied to a child have to be proportionate and sensitive to the age, lesser culpability, personal circumstances and needs of the child, as well as the gravity of the offence and the needs of the society (General Comment No. 10, point 71). However, in respect of public safety, the Committee notes that it may never counterweigh the consideration of the best-interests of the child and the goal of reintegration. Accordingly, a strictly punitive approach contradicts to these principles, while corporal punishments or cruel, inhuman and degrading treatment or punishment are violations of these principles.

The principles set out in the UNCRC are interpreted by a number of other UN documents, such as the Riyadh Guidelines and the Tokyo Rules (see in Chapter II). According to the Riyadh Guidelines non-criminalisation and non-penalisation shall be the primary principle in those cases where no serious damage or harm to other had been caused (Rule 5). The Guidelines highlight that non-conform behaviour in the youth is the natural part of maturation and growth, and it is likely to remain a one-off occasion or disappear with the transition to adulthood. Therefore labelling children who committed minor crimes as "deviants", "delinquents" or "pre-delinquents" shall be avoided as being an undesirable intervention to the maturing process that contributes to developing negative behavioural patterns. In order to secure the consideration and understanding of the best-interests of the child in the prevention process children who committed minor crimes should be subject to community-based services and programmes, rather than formal intervention by agencies of social control (Rule 6). Apart from promoting non-custodial measures in informal settings at pre-trial level (Rule 5), the Tokyo Rules contain further requirements on applying alternatives during the trial and in the sentencing stage. In respect of the decision about the most appropriate disposition the Tokyo Rules require the judicial authority to "take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate", drawing attention to the restorative practices as well (Rule 8.1). In light of the Tokyo Rules sentencing authorities may dispose of cases in the following ways: (a) Verbal sanctions, such

as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of the measures listed above.

Recommendations of the Council of Europe are also strongly committed to the promotion and the expansion of alternatives to deprivation of liberty. The Council of Europe's Rec(1987)20 set out the requirement on encouraging the development of diversion at the prosecutors level or at the police level, in cooperation with the social services (Rule 2). Rec(2003)20 promotes three paramount goals of the juvenile justice system: (1) the prevention of offending and re-offending; (2) the rehabilitation and reintegration of offenders; (3) regard for the needs and interests of the victims of crime (Dünkel, 2009). It affirms the need for the expansion of the range of suitable alternatives to formal prosecution (Rule 7). According to the rules these should not only be available to minor offenders. Member States should develop "innovative and more effective community sanctions and measures" that address serious, violent and persistent juvenile offending as well (Rule 8). These sanctions and measures shall address the offending behaviour as well as the needs of the offender and involve parents, legal guardians and victims of the offence. Rec(2008)11 does not go beyond the guarantees formulated earlier by Recommendations and Rules concerning the human rights of child offenders (Dünkel, 2009), however these are presented from an implementation-oriented approach. Rule 18 of the Recommendation highlights the importance of professional and well-prepared the staff working with juveniles: „their recruitment, special training and conditions of work shall ensure that they are able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them".

As the international regulation sets out, countries are responsible for expanding alternatives to deprivation of liberty, as well as ensuring that new alternatives are promoted and applied in practice. Forde and her colleagues (IJJO, 2015) identified four basic needs in respect of developing the system of alternative measures. The first is the need for the establishment of a *legislative basis* that allows authorities to apply and children to benefit from alternative sanctions and measures that allow avoiding deprivation of liberty. The second is developing *new methods* that fit the best to the juvenile justice system of the given country. In case of implementation of foreign methodologies state authorities have to take into consideration the differences between the two systems and the potential target groups, and modify given parts in order to ensure the effectiveness of the programme in the new environment. The third is *measuring effectiveness* of the alternatives, providing feedback to the responsible authorities and encouraging further improvement. This need requires appropriate data collection and dissemination regarding to the indicators of the effectiveness of the measure. Finally, the key to the effective implementation is the *communication* of goals, methods and benefits of the strategy of measure to the relevant stakeholders of the system. The means of effective advocacy of political and professional commitment are providing continuous measurement and research on the effects and highlighting the cost-effectiveness of the alternative compared to detention. Furthermore, professionals should be

informed and trained to be able to apply alternatives, and multi-agency cooperation should be built in order to enhance the effectiveness of the procedures (IJJO, 2015; Pinheiro, 2006, p. 206).

The broad definition of alternative measures requires further categorization that sets out the general goal, the procedural position, and the role in the juvenile's development. Dünkel, Pruin and Grzywa (2010) examined the sanctioning system of European countries along informal and formal sanctions and measures. In their reading informal sanctions and measures are those which "are imposed either by the juvenile prosecutor or by the juvenile judge either at a pre-court level or otherwise without a verdict or a regular proceeding (typically diversionary procedures)", while formal sanctions and measures "are defined as being imposed by a juvenile judge or court during or after a formal proceeding (regularly with an oral hearing)" (Dünkel, Pruin & Grzywa, 2010, p. 1650). This differentiation is in line with General Comment No. 10 of the Committee on the Rights of the Child that also divides interventions to "measures without resorting to judicial proceedings" and „measures in the context of judicial proceedings" (point 22). The analysis of Dünkel and his colleagues further divides informal alternatives to (1) non-interventional diversion, (2) diversion in combination with referral to social services or special administrative authorities, (3) conditional suspension of prosecution. Formal sanctions and measures are proposed to be divided to the following categories: (1) warnings, reprimands, conviction without sentence, educational "directives"; (2) fines, community service, reparation orders, mediation; (3) social training courses and other more intensive educational sanctions; (4) mixed sentences, combination orders; (5) suspended sentences without supervision by the Probation Service; (6) probation; (7) suspended sentences with supervision by the Probation Service, electronic monitoring; (8) deprivation of liberty (Dünkel, Pruin & Grzywa, 2010, p. 1671). Thus, deprivation of liberty has seven groups of alternatives on the list of eight categories of formal sanctions and measures within the juvenile justices system.

For the purpose of comparative analysis I will use a simplified scheme of the above mentioned categories, focusing on the procedural position of the given alternative, rather than its goal. I will distinguish (1) non-intervention, (2) special diversion measures, (3) conditional intervention and penal sanctions and (3) child protective measures applicable to juvenile offenders throughout the procedural stages of the juvenile justice procedure. With regard to the common practice of sanctioning status offences and non-criminal antisocial behaviour of children even with deprivation of liberty, I found it reasonable to include the situation of being 'at risk' of offending to the overview as well. In this sense '*child at risk'* is the child who has not committed a formal criminal offence, but may have committed other antisocial acts which are sanctioned similarly as crimes. Special regulation on the response to petty offences is introduced under V.4 of this Chapter, therefore I only provide overview about the applicable measures here.

The first alternative measure to deprivation of liberty is *non-intervention*. Based on their results in the Edinburgh Study McAra and McVie (2008) suggest that the early involvement even in the Children's Hearing System is likely to result in constant recycling into the system and therefore facilitates swelling instead of diminishing the number of youngsters retained in the system. According to their results desistance is more likely in those cases, when police officers or Reporters decide not to refer the case to the Children's Hearing,

and non-intervention strategy is also able to tackle serious offending. Under *'non-intervention'* I understand all those alternatives, which result in no formal intervention whatsoever, recognising the act of the child as a one-off act.

The least stigmatising formal alternatives are those, which *divert the child from juvenile justice* to social care (e.g. with regard to psychological problems), health care (e.g.in case of drug-abuse), or any other formalised system that addresses education or therapy of juveniles. Art. 40 (3) therefore declares the obligation of States Parties to promote the establishment of laws, procedures, authorities and institutions for children, and provide "whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected" (Art. 40 (3) (b)). Based on the requirements of the international child law, measures of justice and child protection are to be clearly separated from each other. The requirement of separation reflects not only to labelling effect of the measures but also the principle of gradation and the trust in fairness of the justice. The optimal correspondence between juvenile justice and child protection is detailed by the Committee on the Rights of the Child in the General Comment No. 10. The document highlights the primacy of crime preventive goals in juvenile justice referring to the UN Riyadh Guidelines, and urges States Parties to take measures to develop health care, to prevent victimisation and to organize parental trainings for building healthy and non-abusive family environments (point 18). Prevention by means of improving family environment is the most important task, even if the child has been involved in minor criminality. Juvenile justice and child protection connect here, in the procedure of 'diversion', which aims to assist in avoiding justice measures through either non-intervention or child protective intervention. The goal of the measure is always to provide a bearable and not stigmatizing alternative to the judicial procedure and sanction. Diversion has strict general criteria set in the above international document: (1) it may be initiated in those cases where the child is alleged as, accused of, or recognized as having infringed criminal law; (2) the child gave his or her consent freely and voluntarily to the diversion; (3) it should be used only in case of having convincing evidence; and (4) further legal proceeding will not be imposed against the child with regard to his or her acknowledgement of the responsibility (General Comment Nr. 10, point 13). In Europe most countries accept pre-court diversion only if it is at least approved by the prosecutor (Dünkel, 2009, p. 1663). '*Special diversionary measures'* in this comparison refers to the measures which divert children formally from the justice system to an intervention-programme the accomplishment of which leads to the liberation from penal consequences (punishment, intervention, criminal record).

Conditional interventions within the justice system may be applied throughout the whole procedure in order to prevent unnecessary institutionalisation of children. The application of non-custodial and non-punitive measures during the pre-trial phase is of high importance with regard to the presumption of innocence until actual conviction. *Conditional alternative measures and formal punishments* applied by the court serve the goal of effective tertiary prevention through supporting the resocialisation and rehabilitation of youth offenders within the community. As Pinheiro (2006, p. 179) notes, community-based alternatives provide not only a safer environment for children, but much more effective means of rehabilitation. Therefore the Committee on the Rights of the Child (point 29) reminds States

Parties that "reintegration requires that no action will be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society". The Committee recommends appropriate social and/or educational alternatives to deprivation of liberty, such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention (point 28). Under *'conditional intervention/penal sanction or measure'* I collected those detention alternatives, which are imposed in a formal procedure and result in penal consequences.

It is important to mention the *child protection measures* among the alternatives to deprivation of liberty with regard to their significant role in intervening to eliminate risk factors of offending within the family and the neighbourhood and in providing support to justice authorities. As we have seen in Chapter IV in some countries, such as in Finland and Belgium the role of child protection in tertiary prevention is even more significant than the role of the actual justice system. This approach has a lot of advantages especially considering the expertise of the personnel and the child-friendly treatment of children. However, it may also have disadvantages, primarily with regard to the fact that guarantees provided in the justice system do not apply to child protection procedures. Furthermore, while children shall be dealt with in the justice system exclusively with regard to their offence, child protection does not consider crime as such as an indicator: it responds to risk factors rather than the crime itself. In some cases the alternative to deprivation of liberty within the justice system remains deprivation of liberty within the child protection system, with regard to behavioural problems of the child and the incapability of families. Concerning to this phenomenon it would be important to conduct research on the reasons and outcomes of the treatment of children with behavioural problems within the child protection systems. With regard to the lack of data on institutional reactions within child protection, in the following analysis I will only list the available measures.

The international rules contain a number of guiding principles regarding to the establishment and the application of alternatives to the deprivation of liberty. Naturally, the following principles shall be applied within the holistic framework of the UNCRC:

1. A variety of alternative measures shall be established and offered within the justice system. The bigger variety of opportunities enhances the probability of finding a measure suitable for both the personal characteristics of the juvenile and the gravity of the offence. Alternatives shall be designed to be applicable at different stages of the criminal procedure.
2. Alternatives to detention designed to respond to minor criminality shall take place outside of the justice system. As according to General Comment No. 10 of the Committee on the Rights of the Child the vast majority of children who commit minor offences remain once-in-a-lifetime offenders or desist from the criminal career during their late adolescence without becoming involved into serious offending. In this respect it is preferable to avoid stigmatisation following from a justice intervention and apply supportive measures in order to prevent the escalation of the problem and engagement in further criminal acts.

3. Keeping the goal of appropriate socialisation and rehabilitation of offenders in mind, the requirement of establishing community-based or restorative sanctions.
4. The measures applied in the different stages of the procedure shall be proportionate to the offence and the personal circumstances of the child, and consistent within the system of institutional reactions. It may be argued, that any reaction to petty or minor criminality is not a real "alternative to deprivation of liberty", because in a proportionate system deprivation of liberty for petty or minor offences is simply excluded. Some of the formal reactions to the petty crimes shall be understood rather as alternatives to non-intervention, and in this respect often as being unnecessary interventions. This applies especially to sanctioning of status offences of children. Table 19 shows the proportionality of measures compared to the gravity of the offence.

Table 19. Proportionality of measures

	MEASURE				
		non-intervention	special diversionary measure	conditional intervention	child protective measure
GRAVITY OF THE OFFENCE	**petty/minor offence**	*X*	X	-	X
	general		X	X	X
	major offence			X	X

Hereinafter I will provide an introduction to the complexity of the theoretical framework on alternative measures. Tables 20-25 contain the detention alternatives available in all stages of the procedure in the countries examined in this Chapter. The comparison does not contain full descriptions about the available alternative measures; the purpose is to place these as elements in the justice system.

Table 20. The system of alternative measures in the Netherlands

	ALTERNATIVE MEASURES					DEPRIVATION OF LIBERTY
Procedural stage		**non-intervention**	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk	*(only child-protective measure)*	Halt for truancy (status offence)		possible	-
	pre-trial					- police custody - pre-trial detention
	-> police (petty offence)	dismissal	Halt		referral to child-protective authorities (may be additional to HAlt)	
	-> police (serious offence)			- house arrest - night detention - electronic house arrest - supervision	- placement in foster care	
	-> prosecutor	dismissal	- prosecution settlement (OM-afdoening) - mediation			
	trial		- mediation			
	sentencing	reprimand	- other types of interventions	- every other type of punishment or sanction (such as behavioural measure, *disposal to education,* fine, community work sentence) - probation - suspended detention with or without condition - youth detention under conditions	Placement in closed youth care	Detention in a youth institution

The system of alternative measures in *the Netherlands* is unique in Europe with regard to the huge variety of available measures and methodologies that can be applied in different stages of the juvenile procedure (DCI NL, 2015). The most important alternative measure is the Halt measure. Halt offers educational intervention programme for children who committed minor offences. Formally the diversion has to be approved by the prosecutor, but otherwise police and the independent Halt offices arrange the whole procedure. The Halt measure is so popular, that non-intervention is practically not applied anymore in the Netherlands (Dünkel, 2009, p. 1655). Apart from this measure the Dutch system constantly experiments with alternatives in every stage of the procedure. In this respect the electronic monitoring as an alternative to pre-trial detention generated serious debate in the past years. Concerns include the children's rights to privacy and the constant experience of being under surveillance even in your private environment.

Alternative measures are not only available in significant number, but they are also applied to the vast majority of cases, which shows in the dropping number of custodial sentences. Since the reform of closed juvenile facilities in 2008 the number of children in detention dropped so dramatically, that institutions had to be closed with regard to the small number of inmates (DCI NL, 2014). Parallel to the institutional reform, and as a reaction to the international complaints the number of children in pre-trial detention has also decreased significantly, and the previously criticized waiting lists disappeared (CRC/C/NLD/CO/3, point 77). In conclusion it might be argued that the Dutch system of alternatives is close to full compliance with the requirements of the UNCRC and the European recommendations on measures, and therefore it provides a good example to other countries.

In the Netherlands there is a variety of special interventions focusing on the child's problems rather than his actual punishment. Methodologies of special interventions are approved by the Recognition Commission on Behavioural Intervention in Justice (*Erkenningscommissie Gedragsinterventies Justitie*). The available methodologies are listed in Chapter IV.

Table 21. The system of alternative measures in Hungary

	ALTERNATIVE MEASURES					DEPRIVATION OF LIBERTY
Procedural stage		**non-intervention**	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk	*(only in child-protective terms)*	preventive supervision		possible	confinement
	pre-trial					- police custody - pre-trial detention
	-> police (petty offence)	dismissal	preventive supervision		(referral to child-protective authorities)	
	-> police (serious offence)				(referral to child-protective authorities)	
	-> prosecutor	dismissal		mediation	(referral to child-protective authorities)	
	trial			mediation		- pre-trial detention
	sentencing	reprimand		- fine - community work sentence - probation - suspended detention with or without condition - independent measures	(referral to child-protective authorities)	deprivation of liberty in a juvenile prison or a reformatory institution

The most important step in the development of the *Hungarian* system of alternatives was the implementation of mediation in 2007, which introduced the restorative perspective into the Hungarian justice system. Although the originally established system went through a reform in 2009 with the purpose of improvement of eligibility, it did not become as popular as expected. Other alternatives to deprivation of liberty, such as community work or fine as not

particularly popular either. The most frequently applied alternatives of the system are still the conditional suspension of the prosecution and suspended imprisonment imposed by the court (Lévay, 2016). This implies that Hungarian judges still prefer supervision and strict control with the threat of imprisonment in case of failing to comply with the behavioural rules, rather than imposing restorative measures.

It is important to highlight that Hungary is the only country among those examined here which allows "short sharp shock" measure with the purpose of repression for children who committed minor offences or administrative offences.[34] This measure has been introduced in 2010, and it caused serious inconsistency in the Hungarian juvenile justice system: it introduced the possibility of deprivation of liberty to a system, the goal of which is to prevent children (and adults) from criminalisation and stigmatisation. Under V.4.1 of this Chapter this measure is described in detail. As for the alternatives to this measure, the latest legislation regarding the prevention of youth criminality introduced the measure called 'preventive supervision' at the end of 2013. The new law came into force on 1 January 2015 and aims to provide supervision and guidance as an alternative to confinement and/or pre-trial detention for those children who are suspected of a criminal act or administrative offence. According to the new rules, the procedure happens as follows: (1) any stakeholder of the justice system may initiate ordering preventive supervision at the Child Protection Bureau with regard to delinquent act or administrative offence of a child; (2) the Child Protection Bureau calls upon the Probation Office to assess the 'risk' of the child being involved in further offending; (3) after receiving the report, the Child Protection Bureau may decide about dropping the case because of the lack of risk, or orders preventive supervision; (4) in the latter case the Child Protection Bureau appoints a probation officer as 'preventive supervisor', who may control the child's daily activities, helps to get through the procedure and discusses the way of possible changes in behaviour with him; (5) the term of supervision is for a minimum of half a year, but otherwise unconditional, and does not necessarily terminate even in case of judicial dismissal of the original case. By amending the Act on the Administration of Child Protection and Guardianship of 1997, the law-maker perceived this measure as a child protective institution, although its function is clearly justice related: to support juvenile justice in supervising 'risky' delinquents during the pre-trial term. As it is claimed in the introductory chapters for the amendment, the measure will help during the long juvenile justice procedures, where child protection was unable to provide crucial support so far. The rhetoric, through which public institutions want to justify restrictions of human rights on the basis of their own inability, already indicates several human rights issues. Violation of human rights together with the fundamental inconsistency with the operating systematic elements and international requirements on the build-up of juvenile justice measures only increases worries about the measure.

Looking at the requirements of diversion it is clear, that preventive supervision cannot be considered as a diversion measure. It does not offer the opportunity of voluntary decision to the child; neither justifies his efforts and honesty with dismissal of his case. The supervision may be ordered regardless of the outcome of the criminal or administrative

[34] Although this was possible earlier in England and in the Netherlands, the possibility had been abolished in both countries (Dünkel, 2009, p. 1675).

procedure. Moreover, the procedure shows 'diversion' to the opposite direction compared to the required: from child protection to the justice system, since probation workers for juveniles are working as agents of the justice system. Thus, in this system it is possible that, regardless of the conviction in the criminal case, the status and supervisor of the child will not change, because his preventive supervisor is a probation worker at the same time. Regarding the above mentioned problems, preventive supervision violates several articles of the UNCRC, namely Art. 40(2) point b) on the requirement of being presumed innocent until proven guilty according to law, Art. 2 on non-discrimination, Art. 3 on the requirement of taking the child's best interests into primary consideration in public institutions, and Art. 40(1) about the promotion of the dignity of the child. Furthermore, looking at the institution through the eyes of a child, it seems unlikely that despite being treated as a convicted criminal even before the judgement on his guilt a child could trust the rightful evaluation of his or her case.

V.2.c. Belgium

As mentioned in Chapter IV, the Belgian system does not allow diversion on the police level, only on the level of Public Prosecutor, however, this happens rarely in practice (4,2% of all cases according to Van Dijk el at., 2008, p. 207). However, the practice of informal diversion both by the police and by the prosecutors and the lack of appropriate statistical data may cause bias in defining the importance of providing alternatives on these levels of the justice system (Dünkel, Pruin & Grzywa 2010, p. 1686). Furthermore, it is difficult to separate judicial interventions by their main purpose or nature, because principally all of them are child protective interventions, and therefore may be seen as diversion from the formal justice procedure.

Nevertheless, the available alternatives to deprivation of liberty are similar to those measures available in other countries, such as supervisory measures, ambulant treatments and restorative alternatives. It is possible to impose community service to juvenile offenders. The actual community work is carried out in a variety of non-governmental organisations, such as rest homes, street cleaning services, or hospitals and it may be 20 to 200 hours long (Van Dijk el at., 2008, p. 207). In Belgium Youth Courts cannot impose fine for juveniles, however they may ask the juvenile to prepare a 'written project' and define goals to behavioural change to himself (Dünkel, Pruin & Grzywa, 2010, p. 1672). In line with the required restorative approach, victim-offender mediation is a procedural alternative. The success of the mediation does not necessarily settle the case but it is perceived as a mitigating factor for the sentence imposed by the judge. In this case mediation is a tool applied together with other measures in order to broaden social control (Dünkel, Pruin & Grzywa, 2010, p. 1661).

Table 22. The system of alternative measures in Belgium

	ALTERNATIVE MEASURES					DEPRIVATION OF LIBERTY
Procedural stage		**non-intervention**	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk	*(only in child-protective terms)*			only protective measures	-
	pre-trial					- police custody - pre-trial detention
	-> police (petty offence)	- unofficial dismissal - unofficial warnings (even with condition)			referral to child-protective authorities	
	-> police (serious offence)				referral to child-protective authorities	
	-> prosecutor	- dismissal - warning of the child/the family	- diversion	- mediation	referral to child-protective authorities	
	trial			- mediation		- pre-trial detention
	sentencing	reprimand	- community service - supervision by social services - intensive educational supervision - ambulant treatment - supervision by a legal person - placement in an open child protection institution - written project			Deprivation of liberty in closed child care, health care institution, or detention in an adult facility

Table 23. The system of alternative measures in England

	ALTERNATIVE MEASURES					DEPRIVATION OF LIBERTY
Procedural stage		**non-intervention**	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk	*(only child-protective measure)*		Youth Restorative Disposal	possible	-
	pre-trial					- police custody - pre-trial detention
	-> police (petty offence)	- informal warning formal warning		-referral to the YOT -Youth Restorative Disposal	referral to child-protective authorities	
	-> police (serious offence)					
	-> prosecutor	dismissal		Youth Conditional Cautions	referral to child-protective authorities	
	trial					- pre-trial
	sentencing	dismissal		- conditional discharge - fine and compensation - reparation order - other ancillary measures (e.g. earlier the antisocial behaviour orders and now criminal behaviour orders) - community orders - attendance centre order - community service - probation	referral to child-protective authorities	Detention in a YOI, a secure training centre or a secure children's home.

There has been an upheaval of restorative methods and principles in England in the past decade, which supported the development of a variety of diversion methods and detention alternatives. The most recent document that proves the engagement to restorative practices of the UK Government is the statutory guidance of the Home Office (2014) that contains instructions to professional about the victim-focused implementation of the Anti-social Behaviour, Crime and Policing Act 2014.

The most recent development within the restorative framework of youth justice is the Youth Restorative Disposal. This may be applied in cases where juveniles or children are caught on the spot, and aim to settle the case right after the antisocial act or offences. The specially trained police officer helps the offender and the victim to come to an agreement about the reparation of damage or harm caused. On the next level of the justice system the prosecutor may impose Youth Conditional Cautions, which is a specific diversion measure targeting 16-17 year-olds, who would be otherwise sent to court. The process is based on restorative principles, and requires the police to facilitate the juvenile offender's efforts to repair the harm caused by the offence. 'Reparation Order' has been introduced by the Crime and Disorder Act 1998 aiming to replace repressive intervention, among others short term detention. The order requires the accomplishment of restorative task that may be any action done for the victim or the community. It may also entail the referral to the YOP (Dünkel, Horsfield & Păroşanu, 2015, pp. 53-60). Based on the research on the application of the above restorative measures, their application in practice justifies theoretical support, although they are applied in the offender-community context rather than the offender-victim context (Dünkel, Horsfield & Păroşanu, 2015, pp. 57-59).

Besides the restorative practices there are various opportunities available to the court, among which relatively traditional alternative instruments such as probation, community service and fine. Community service may only be imposed for a juvenile 16 or older (Dünkel, Pruin & Grzywa, 2010 2009, p. 1673). In England and Wales police may also divert minor cases formally or informally and without condition, and as practice shows this 'alternative to detention' is a popular measure that is imposed for about half of the 14 to 16 years old population of England and Wales (Dünkel, Pruin & Grzywa, 2010, p. 1655 and 1688).

Table 24. The system of alternative measures in Scotland

	ALTERNATIVE MEASURES					DEPRIVATION OF LIBERTY
Procedural stage		**non-intervention**	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk	non-referral to the Children's Hearing		ASBO	- possible reaction by the Children's Hearing	- police custody - pre-trial detention
	pre-trial			-Compensation Orders, -Community Reparation Orders Community Payback Order		
	-> police (petty offence)	dismissal	ASBO		referral to the Children's Hearing	
	-> police (serious offence)				referral to the Children's Hearing	
	Children's Hearing	dismissal	mediation Restorative Justice Conferences			
	trial		mediation Restorative Justice Conferences			
	sentencing	dismissal		Interventions applied by the **District Court/Sheriff Court**: - Compensation Orders - Community Reparation Orders - Community Payback Order		Detention in a YOI, secure training center or a secure children's home

The Scottish youth justice system is similar to the Belgian system in respect of diversion and applying alternatives. With regard to the Scottish criminal procedure in which the adult justice system deals with juvenile offenders as well, formally all cases handled by the Children's Hearing are settled outside of the justice system. Juvenile offenders under 16 years receive practically exclusively child protective measures, and among these most likely supervision (Dünkel, Pruin & Grzywa, 2010, p. 1657). Juveniles above 16, who are most likely to be tried in front of the adult courts receive community sanctions, or in case of serious crimes custodial sentences. It shall be noted that most of the custodial sentences imposed to juveniles are relatively short (Dünkel, Pruin & Grzywa, 2010, p. 1699).

The efforts of the Government to implement restorative practices in the UK have resulted in various restorative practices in Scotland as well. Within the Children's Hearing there it is possible to divert the case to mediation or Restorative Justice Conferences (among which for example Family Group Conference). Other restorative opportunities are for instance Shuttle Dialogues (a form of indirect mediation, where victim and offender do not personally meet), and other post-trial forms of restorative conversations between victim and offender. Furthermore, on 1 February 2011 the "Community Payback Orders" came into force. These may be applied in the District and Sheriff Courts as well as prior to trial, and they replaced the provisions for Community Service Orders, Probation Orders and Supervised Attendance Orders. The Court is entitled to choose the most appropriate requirements from a list, tailoring the actual intervention to the individual needs and the offence. The Order may contain for example community work, cleaning pathways of snow, repainting community centres, etc. (Dünkel, Horsfield & Păroşanu, 2015, pp. 147-154).

V.2.f. Finland

Table 25.The system of alternative measures in Finland

Procedural stage		ALTERNATIVE MEASURES				DEPRIVATION OF LIBERTY
		non-intervention	**special diversion measure**	**conditional intervention**	**child protective measure**	
	child at risk				the only possible reaction	-
	pre-trial					- police custody
	-> *police (petty offence)*	dismissal			referral to child-protective authorities	
	-> *police (serious offence)*			- house arrest	referral to child-protective authorities	- pre-trial detention
	-> prosecutor	dismissal	- mediation	- conditional suspension of the case	referral to child-protective authorities	
	trial		- mediation			- pre-trial detention
	sentencing	reprimand		- fine - community work sentence - probation - suspended detention with or without condition	referral to child-protective authorities	deprivation of liberty in prison

Finland is unquestionably Europe's leading country in applying alternative to deprivation of liberty, with regard to the fact that the number juveniles deprived in their liberty is extremely low: the number of juveniles detained in Finland on any day of the year is usually under 10. Most of the juveniles who commit offences are referred to the social services, and dealt with within the child protection system. An example to the above mentioned disputable child protective measures are the practice of the Finnish social services regarding out-of-home placements. Although out-of home placement by child welfare is not a typical justice-instrument, in the Finnish system where most children are diverted to the child protection system it is reasonable to take a look at the tendencies of out-of-home placements

and welfare measures. Based on the data provided by the National Institute of Health and Welfare of Finland (NIHWF, 2015, p. 31) the number of out-of home- placements had steeply grown between 1998 and 2008, while since 2010 it stagnates between 10.000 and 11.000. According to the statistics, in 2014 about 18.000 children and young people were placed outside of their homes, and a total of 10.700 children were taken into care. 38% of those placed outside of home were taken to foster care, while 39% were placed in residential care and 12% in professional family homes. About 1,4 % of the children under the age of 18 live outside of home in Finland (NIHWF, 2015, p. 101), but proportion of children in a given age-groups may be significantly different. According to the data of the NIHWF (2010, p. 51) more than 2,5% of the cohort of 16-17 year olds lived in care in 2010. Beyond this the number of children who receive community care more than doubled between 1995 and 2014. This data highlights the importance of childcare in those systems, where the main place of crime prevention is the welfare system. While it is a general assumption of children's rights that a family-based intervention that builds on the strengths of the relationships and responsibility of family members serves the best interest of the child it seems that building truly effective strategies in this field is a challenge.

According to Dünkel and colleagues (2010, p. 1691) the most frequently used judicial sanction to juveniles is a fine (74% of the sentences among 15 to 27 years old juveniles), which constitutes an exceptional practice among European countries. The second of the most frequently applied measures is suspended (conditional) imprisonment.

In the Finnish justice system mediation is applied as a method of diversion, and therefore it is not included in the official statistics, although its estimated importance is relatively big.

V.3. Deprivation of liberty

Chapter II introduced the phenomenon of institutionalisation of children, and how it leads to increased risk to victimisation of all forms of abuse and exploitation and engaging in criminal activities and substance abuse. According to Pinheiro (2006, pp. 189-200), violence against children in justice institutions and in police custody occurs even more often that in residential child care, and it is likely to be physically and psychologically more punitive than in other environments. Although any form of institutionalisation is opposed by children's rights experts and practitioners, Pinheiro found that scientific and human rights' arguments are disregarded in the 'crime and safety-conscious societies' of our times, which are unable or unwilling to deal with the antisocial behaviour otherwise: "The lack of public concern about brutality towards children in correctional institutions may reflect society's rejection of children who do not conform to conventional social behaviour" (Pinheiro, 2006, p. 176). The common use of deprivation of liberty may indeed be explained by political interest in these measures, since there is scientific consensus about the effectiveness of community-based measures in preventing recidivism as opposed to institutionalisation of children, regardless of the intervention applied in detention or other closed facility (Van der Laan et al, 2012, p. 234-235).

The analysis of the recommendations of the Committee on the Rights of the Child in Chapter III has shown, that deprivation of liberty of children is unquestionably the most problematic issue among the guarantees of children's rights. The UNCRC declared clear standards regarding to the deprivation of liberty of children in Articles 37 and 40, which require from states to ensure the following:

- *Children are not and cannot be subjects neither to torture or other cruel, inhuman or degrading treatment or punishment, nor to capital punishment or life imprisonment without possibility of release (Art. 37(a)).*
- *Liberty of children cannot be deprived unlawfully or arbitrary, and all forms of deprivation of liberty shall be used as a measure of last resort, for the shortest appropriate period of time* (Art. 37(b)). This provision is affirmed by a number of international documents, and strategies. The Council of Europe's Rec(2008)11 on the European Rules for Juvenile Offenders Subject to Sanctions and Measures goes even further requiring special efforts from States Parties in order to completely *avoid* pre-trial detention (Rule 10). Goldson and Kilkelly note that this provision restricts the use of deprivation of liberty to those "relatively rare cases where a child's behaviour places him/her and/or others at demonstrable serious risk in the community and where there is literally no suitable non-custodial alternative available to the courts" (Goldson & Kilkelly, 2013, p. 354).
- *Children, who are deprived in their liberty, should be treated with humanity and respect, and they shall be treated in a manner that respects the needs of people in their age* (Art. 37(c)). Concerning this Article the UNCRC highlights that every child shall be separated from adult offenders and his right to maintain contact with his family, with the exception of the case where these would not serve the child's best interest (Art. 37(c)). These requirements are in line with the Article 10 (2) b) and 3 of the

ICCPR which stipulate that juvenile offenders, when detained, shall be segregated from adults, and requires the age-sensitive treatment of them. Based on Article 2 a) of the ICCPR convicted offenders shall be separated from accused.

- *Children who are deprived in their liberty should have prompt access to legal and other appropriate assistance, and they should have the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (Art. 37(c))*.

In line with Article 10(2) b) of the ICCPR, the UNCRC requires that youth offenders are placed in institutions that are different from those of adult offenders (Article 37 c)). Article 10(2) a) of the ICCPR supplements this rule with the requirement of separation of offenders from non-offenders. The latter rule effects those juvenile institutions in Europe, which treat behavioural problems of both juvenile offenders and non-delinquent children. On the European-level of international regulation Rec(2008)11 contains further detailed requirement on the sanctions and measures that deprive the liberty of the convicted juvenile (Part III). With regard to the *separation from adults*, the Recommendation affirms that "juveniles shall not be held in institutions for adults, but in institutions specially designed for them. If juveniles are nevertheless exceptionally held in an institution for adults, they shall be accommodated separately unless in individual cases where it is in their best interest not to do so. In all cases, these rules shall apply to them" (Rule 59.1). The Recommendations detail the requirements on the *physical conditions* of closed facilities that shall be as closely as possible the positive aspects of life in the community (Rule 53.3). Therefore the number of juveniles in the institutions shall be small enough for providing of appropriate individual care, and organised to small living units (Rule 53.4). The accommodation must concern health and hygiene of the inmates beyond respecting the need for certain amount of privacy (Rule 63.1). This includes among others paying attention to the space provided to each juvenile, providing possibly individual bedrooms, proper cleaning in the institutions, access to hygienic and private sanitary facilities, preferably daily shower, nutritious diet (three meals per day), available physical and mental medical care and attention to special vulnerabilities (Rules 63-75). The regime activities shall aim at education, personal and social development, vocational training, rehabilitation and preparation for release (Rule 77).

Keeping *contact with the family* and the outside world is of high importance for juvenile in closed settings. Therefore effort must be taken to establish juvenile institutions in places that are easy to access to facilitate contact with the family and support reintegration of the juvenile (Rule 53.3 and 55) Furthermore, juveniles shall be allowed to communicate with their families via post without restriction as to their number, make phone calls as often as possible and receive regular visits (Rule 83). Information about deaths and serious illness of near relative must be promptly communicated to the juvenile and regular leaves with or without escorting must be part of the normal regime (Rule 85.3).

It is well-known, that *violence* occurs often in closed settings, both between detainees/inmates and in the staff-inmate context. Closed settings increase the vulnerability of juveniles and require special measures to prevent victimisation and to be able to deal with aggression (Rules 88.2 and 90.3). The prevention strategy shall build on positive relationship between staff and the juveniles on the one hand (Rule 88.3), while on the other hand the commitment of the juveniles in maintaining 'good order' (Rule 88.4). The force used by the

staff shall be restricted to cases of "self defence, attempted escape, physical resistance to a lawful order, direct risk of self-harm, harm to others or serious damage to property" (90.1) and limited to the minimum amount and shortest time necessary (90.2). The use of solitary confinement as a disciplinary method and isolation as a mean to calm down juveniles is a measure that regularly receives critics from the Committee on the Rights of the Child. Rec(2008)11 reflects on these concerns with prohibiting the use of solitary confinement (Rule 95.3) and requiring the limitation of isolation to exceptional cases and for a maximum of 24 hours, controlled by a medical practitioner (Rule 93). Besides isolation, any other separation of juveniles for security or safety reasons must be strictly regulated, and the similar restrictions apply to disciplinary measures (Rules 93-95). Furthermore "collective punishment, corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman and degrading punishment shall be prohibited" (Rule 95.2).

Establishing *complaint mechanisms* available to detainees and applying regular independent *monitoring* in the institutions are essential to prevent violations of children's rights. Therefore juveniles and their legal representatives shall be able to file requests and complaints to the authority responsible for the institution, with the possibility to appeal against the negative response. Complaints shall be followed by a "simple and effective" procedure, preferably applying restorative conflict resolution techniques (Rules 121-122). Inspection and monitoring is primarily the task of governmental agencies, which shall take into account the relevant national and international regulation (Rule 125.). The conditions and the treatment applied in the institution, and in particular the use of force, restraints, disciplinary measures, etc., shall be monitored by an independent body, which may be accessed by juveniles (Rules 126.1.-Rules 126.2). The national independent monitoring body cooperates closely with international agencies that are entitled to visit institutions, such as the CPT (126.4).

Concerning to procedural guarantees, Liefaard (2008) lists the following rights that shall be provided to children who are deprived in their liberty: (1) right to legal and other appropriate assistance, including the right to meet family members; (2) right to information on reasons for arrest and prompt information on charges; (3) right to challenge the legality of deprivation of liberty, and in case of unlawful deprivation of liberty, (4) right to compensation. According to General Comment No. 10 those procedures are 'prompt', which guarantee, that the child arrested and deprived of his/her liberty is "brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours", and where "pre-trial detention is reviewed regularly, preferably every two weeks".

In this subchapter I will to analyse how the countries under examination correspond or fail to correspond to the international norms. In this analysis I will examine the most recent reports of the European Committee for the Prevention of Torture (CPT), and use the reports of national civil organisations (such as the Hungarian Helsinki Committee) as well as academic research reports to supplement the information provided by the international body. The CPT monitors the conditions of youth institutions frequently, looking at different aspects of detention. The recommendations of the CPT regarding to the physical conditions in closed facilities show that according to the monitoring body, juveniles should be placed in relatively small units, the suitable location of which should be assessed properly, in custodial

environment which is designed to serve the needs of children in specific age. This does not only refer to the need for sufficiently educated staff, but also to the importance of physically and intellectually stimulating activity for juveniles, thus the opportunity for learning, working or participating in other activities (Goldson & Kilkelly, 2013).

V.3.1. Separation from adults and non-delinquent children

According to Article 37 c) of the UNCRC children in detention shall be separated from adult offenders. This requirement equally applies to children who are confined because of committing minor offences, who are arrested or restrained pre-trial detention and those who are sentenced to imprisonment. As the Finnish example shows, separation is not always the primary consideration when arranging placement for the child. As mentioned before, *Finland* has an extremely low juvenile prison population which makes juvenile detention and separation form adults very difficult. If a child is placed in an institution close to home, it can happen that he is going to be the only minor in the institution. However, if he is placed to a juvenile ward, it may be far away from his home which makes maintaining contact with his family difficult. The Committee on the Rights of the Child urged Finland in its recommendations in 2005 to withdraw its reservation to article 10, paragraphs 2 (b) and 3, of the ICCPR and take necessary measures to separate children from adults (CRC/C/15/Add.272, point 55). Based on the legal provisions, children should be separated from adults in every stage of the procedure (Nieminen, 2013).

In *Belgium* a minor cannot be detained in prison since 2002 (Section 53 of the YPA), with the exception of the case when the child has been sentenced by an adult court. Therefore, juveniles shall be placed into one of the 9 institutions, from which 5 are located in the French Community and 4 in the Dutch Community (there is no appropriate institution in Brussels and the German-speaking Community). The closed sections of these institutions have limited capacity, 182 places in total (Defence for Children, 2014), therefore juveniles may also be sent provisionally to the Federal Detention Centres, such as the centre in Everberg if they have reached 14 years, and committed serious offences (Defence for Children, 2014, p. 22; Van Dijk, Dumortier & Eliaerts, 2008, p. 193). Although there is significant attention on separating children form adults in detention facilities, the separation in police stations is not yet possible everywhere (Defence for Children Belgium, 2014, p. 40), and transferred offenders are usually also mixed with adult prisoners (Christiaens & Nuytiens, 2009).

According to the *Hungarian* Act of 2013 on the Execution of Punishments, Preventive Measures, Coercive Measures and the Confinement (hereinafter *Execution of Punishments Act*) the treatment during deprivation of liberty of juvenile convicts shall serve the emergence of children's rights, beyond the general goal of education and reintegration (Section 1(2)a)-b)). In light of this goal, juveniles shall be separated from adult offenders during the judicial procedure (Section 391(2)), as well as during the imprisonment sentence (Section 99(1)) and confinement (Section 273(5)c). Juvenile offenders shall be placed in separate institutions, or in wards assigned to juveniles within the adult institution (Section 192(1)), and the obligation to separation applies until their 21st birthday (Section 54(2)). Beyond the explicit obligations to separation, the Hungarian system allows the judge to decide about the placement of juvenile offenders in a reformatory institution in the pre-trial stage, which guarantees a more

child-friendly environment for the juvenile at least in this period. Although *Hungary* has a number of juvenile reformatories and juvenile prisons, it occurs that juveniles have to spend some days in adult police cells (Hungarian Helsinki Committee, 2013b, p. 7).

In the *Netherlands* there is no explicit rule that would prohibit children being placed in adult institutions, although in practise the opposite is more likely to happen, namely that young adult offenders are placed in juvenile institutions if they are tried under juvenile law. Children, who are sentenced according to adult law, and therefore received adult sentence can theoretically be placed in an adult institution, but according to the experts I interviewed the transfer only happens when the child has reached the age when he is too old to be detained in a juvenile institution. As according to the requirements of the ICCPR countries should separate convicted offenders from those whose procedure is not yet ended, however the Netherlands still maintains its reservation on this Article (Liefaard, 2008, pp. 444-445).

From all legally problematic aspects of separation of children in detention, the requirement of separating juvenile offenders from children placed in closed facilities under the child protection law was the most influential in the Netherlands. Traditionally closed facilities for children treated various forms of antisocial behaviour, among which juvenile delinquency. From 1 January 2008 children placed in a closed institution by civil courts (as a child protective a measure) are placed in separate closed facilities according to the Closed Youth Care Act.

In *Scotland* there are 5 young offender institutions (YOI's) that provide similar accommodation to juveniles as those in England. If there is lack of suitable accommodation in a YOI juveniles may be placed in adult institutions (Burman et al., 2010, pp. 1189). As mentioned in Chapter IV this only applies to children above 16, because children under this age cannot be placed in detention.

V.3.2. Physical conditions

Conditions in facilities for deprivation of liberty in European countries show huge variation. This is true for the countries in this examination as well. Among the six countries, the worst conditions were reported from *Hungary*, where the government decided about diminishing the requirement of providing 3.5 m² living space for juvenile offenders to "target", from "norm" in the Governmental Decree 12/2010 (XI. 9.) (Hungarian Helsinki Committee, 2013a, pp. 2-3). From the biggest juvenile prison (Tököli Fiatalkorúak Büntetés-végrehajtási Intézete) the Hungarian Helsinki Committee (2013a) reported unbearable circumstances. There were 185 juveniles detained in total at the time of the visit, which was 101% of the capacity. Two years later the visit of the Ombudsman (AJB, 2015) reported about a crowdedness of 72%. Juveniles in this institution are placed in cells for 2 -11 person (AJB, 2015, p. 4). Every cell was equipped with toilet and running water, however these were dirty, surrounded by wet and musty walls (these were painted after the visit, based on the report of the Hungarian Helsinki Committee (2013a)). Frequency of cleaning bed-linen, towels and clothes were reported to be insufficient, therefore the detainees had to wash their own clothes by hand in cold water. The cells were poorly furnished and dirty. Skin diseases and scab were mentioned as frequently occurring diseases among the whole prison population. Other, smaller institutions are able to allow better conditions, as it shows in another report on the

Juvenile Prison in Pécs (Hungarian Helsinki Committee, 2013b). This institution was much less crowded (70%) and provides clean environment for juveniles, who are placed in 2-3 bed cells. Although the conditions were healthier, bedbugs caused significant problems.

The circumstances in the Huntercombe Young Offender Institution in *England* were described by the CPT as follows: "The cells had reasonable access to natural light and sufficient artificial lighting and heating, were adequately furnished (bed, chair, desk, locker) and contained a metal toilet and sink; all cells had a call bell. However, ventilation was somewhat restricted and the cells were rather cramped (7m²), especially bearing in mind that a juvenile could spend a considerable period of the day locked in one, especially between Friday afternoon and Monday morning. Further, it would be desirable for the toilet and sink to be equipped with a partition" (CPT, 2009, point 87). The CPT found that the opportunities for physical and intellectually stimulating activities were poor in the institution (point 90.), and it received many complaints concerning both the quantity and the quality of the food.

A juvenile offender in *the Netherlands* has the legal right to a room of at least 10 square meters with a window, furnished with at least a bed, a chair, a desk, a wardrobe, a mirror and two sockets (Berger, 2012 p. 896). The CPT found, that the conditions of *The Hague Central Court* detention facility fulfils the national and international requirements: „[It] consisted of 52 holding cells for individual accommodation, most of them measuring some 5m². Two bigger cells measuring respectively 13m² and 21m² were available for holding juveniles. All cells were equipped with a bench, a call bell and an intercom, had adequate artificial lighting (the two cells for juveniles had also access to natural light) and were sufficiently ventilated. They were not equipped with toilets or running water; however, detainees could, on request, use the sanitary facilities situated at the end of the corridor […] Detainees were provided with food (sandwiches, coffee, tea and one hot meal a day). The CPT considers that these arrangements do not call for any particular comments." (CPT, 2012, point 24). Regarding to its visit in 2011 the CPT also noted that the previous capacity problems were successfully eliminated both in remand prisons and detention facilities (CPT, 2012, point 13). This is probably the result of the institutional reorganisation which took place from 2008, and which separated the closed facilities of child protection from juvenile detention.

In the *Finnish* treatment institution, the Niuvanniemi Hospital, the CPT found, that the „ juvenile ward (NEVA) merits particular mention because of truly excellent living conditions offered there. All the living areas were in a very good state of repair and spotlessly clean, bright and airy. The juveniles' rooms (all single) measured at least 18 m² each and were very well furnished and personalised with posters, pictures, plants, etc." (CPT, 2015, point 95). Although, despite the huge space and the almost luxurious circumstances, the CPT expressed its concerns about the use of belt restraints for juvenile inmates below 16, therefore the institution can hardly be seen as a model institution of youth detention. Regarding the Metsälä Detention Unit CPT urged the authorities to pay more attention to the activities of children, in particular to the educational needs (CPT, 2015, point 34).

According to the report of Defence for Children Belgium (2014), conditions in closed youth care institutions in *Belgium* are similar to juvenile detention in other Wester-European countries. These institutions have strong security measures aiming to prevent children from leaving the institution: "the entrance doors of the institutions or the access doors to the

sections are locked. Officers (from the Community) keep guard patrolling the premises and/or through video surveillance. At night all of the juveniles' rooms are locked and there are regimes that allow for authorised temporary leaves, but they vary from one institution to another. The above-mentioned practices of solitary confinement […] are also imposed" (Defence for Children Belgium, 2014, p. 32). Federal provisional detention centres in Everberg and in the French-speaking and the Dutch-speaking community have a capacity of 45-50 places for juvenile offenders. These institutions are actual juvenile detention facilities (with 6 meter tall fence, barbed wire, surveillance cameras, strictly monitored movements and military-like discipline, etc.) accommodating juveniles provisionally placed in closed regime and those who were sentenced to imprisonment by adult courts. Although the institutions are theoretically specialised to educate juveniles, the institutions do not offer beneficial activities, or work, and there is also lack of appropriate personnel and programmes (Defence for Children Belgium, 2014, p. 33-37).

V.3.3. Violence in juvenile institutions

According to Pinheiro (2006, pp. 181-182) the main factors that contribute to violence in institutions are the following: (1) low priority of protecting this already disadvantaged group of the society, which leads to poor conditions in terms of health-care, hygiene, nutrition and adequate staff, (2) inadequate personnel that is unqualified and poorly remunerated, and often becomes the source of aggression (3) lack of monitoring and lack of responsibility for the violence in institutions, and (4) mixing different levels of vulnerability, namely children who are vulnerable to victimisation with children who struggle with aggression and behavioural problems. These factors imply conflicts between basically every actor in this situation. Accordingly, children in custody may suffer violence by (1) staff of the institution, (2) police, (3) peers, and (4) adult detainees in case of placement in mixed institution or ward.

Honkatukia and her colleagues (2006) studied violence talk in *Finnish* reform schools, focusing on its meaning and the narrative applied by the juveniles. They concluded that violence talk in closed settings is often a result of rational choice of the child and applied as a reaction to the situation where his power is limited. They found that violent talk is an important tool of creating social order within the institution as well as in the outside world. They noted however, that violence perpetrated of experienced is different from verbal violence, therefore stating that violence is rather instrumental among youth in reform schools does not follow from the results regarding the talk of violence. Their research points out the complex nature of violence within closed settings, and offers a new viewpoint about the everyday nature of violence as well as the moral views associated with it.

Monitoring bodies find signs of violence in multiple occasions. Violence and ill-treatment of juveniles by staff has been reported by the CPT (2014, point 43 and 50) in Somogy County Remand Prison in Kaposvár, *Hungary*, and the Ombudsman (AJB, 2015) in the Juvenile Prison in Tököl. The alleged illtreatment had reportedly taken place in the cells in those rooms where there is no surveillance, such as the bathroom. Verbal abuse of juveniles often contains racist comments, in particular against the overrepresented Roma population of inmates (AJB, 2015, p. 16). Apart from these cases, the most severe disciplinary sanction in the institutions was disciplinary confinement, which means isolation for up to 10 days (point

107). According to the CPT this measure has a potentially damaging effect on juvenile inmates, and therefore should be applied for juveniles for at most 3 days. Inter-prisoner violence and intimidation is obviously an important issue, in Hungarian institutions. Juveniles report both physical and sexual violence, that often has the role of initiation (see e.g. Hungarian Helsinki Committee, 2013a, p. 4; AJB, 2015, pp. 10-11. In 2015 the Ombudsman (AJB, 2015 pp. 15-16) concluded that despite the intent of the Juvenile Prison in Tököl, juveniles cannot spend enough time with physical activities which would reduce their opportunities and motivation to violence. The reason of this is partially the lack of programmes and sufficient personnel in the prison. The CPT also recommended to the Somogy County Prison to supervise the attitude and behaviour of custodial staff in direct contact with juveniles. The same report recommended to Hungary to pay more attention to the specialised training of the staff working with certain categories of prisoners, among other, juvenile detainees (2014, point 56).

Concerns were raised by the CPT (2009) about solitary confinement of juveniles in the Huntercombe Young Offender Institution (point 104). The CPT received reports about inter-juvenile violence as well, and with regard to the reported difficulties of finding sufficient staff, CPT recommended to the United Kingdom authorities to take the necessary steps to ensure that a rigorous selection and training programme is in place for all staff allocated to a Juvenile YOI (point 95). According to Goldson and Kilkelly (2013) children in detention are also likely to become suicidal, or harm themselves another way in order to escape from other forms of violence, therefore CPT advised that institutions follow a proactive approach through mental health services to juveniles.

In order to mitigate or eliminate violence in detention, institutions should ensure that their staff is carefully selected, fully qualified, and receive adequate wages (Pinheiro, 2006, p. 211-212). Staff should be trained to use non-violent communication and disciplinary measures against children, and beyond the national policies internal regulation should ensure, that the goals and methods are clear to the staff. The impact of positive communication and behaviour of the staff on decrease violence have widely been studied. One example form the Netherlands is the research of André van der Laan and Veroni Eichelsheim (2013), who studied juveniles' adaptation to imprisonment on a juvenile sample. They examined psychological and behavioural factors that may influence reduced or satisfactory adaptation to prison circumstances. They found that social interactions with inmates and positive interaction with staff showed positive associations with safety and well-being. The more positively juveniles experienced their interactions with inmates, the safer they felt and the better well-being they experienced, although they did not have real friendships, but rather “tactical alliances”, in the institution. The same was true to the interactions with staff, although the contact with staff was more limited. Fair treatment and the experience of justice effected the feeling of safety positively, while structured daily activity and recreational opportunities positively related to the feeling of autonomy and well-being. The authors believe that improving the quality of life among juvenile in prison would lead to increased motivation to participate effectively in training programmes and losing stress.

V.3.4. Monitoring of institutions and complaint mechanisms

Adequate monitoring mechanisms for facilities of deprivation of liberty help to avoid exploitation of the vulnerable situation of children (Pinheiro, 2006, pp. 212-213). Based on the UNCRC children should also have opportunity to express their opinion about their treatment.

The complaint system in *the Netherlands* has two stages. In the first stage children can make complaints to the supervisory committee (*Commissie van Toezicht*) of the institution. Every institution has an independent supervisory body of 6 people, each of them appointed by the Ministry of Justice, who have relevant legal, pedagogical, behavioural expertise (Penal Reform International, 2013). Among the members of the supervisory committee there has to be a judge, an advocate and an expert in social-pedagogy (Berger, 2012, p. 898). One of the members visits the institution every month to receive the complaints of children. Children have to request mediation with a member of the supervisory committee, who tries to resolve the problem within 6 weeks. If this is not suitable for the case, or it does not lead to success, the child may submit his complaints to a 3-person sub-committee. The committee must deliver its judgement within 4 weeks after receiving the written complaint, and hear the child and the director of the institutions within this period. Decisions of the supervisory committee are not public, but if the child appeals to the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ), this second decision will be published anonymously (Penal Reform International, 2013). The RSJ is an appeal committee that deals primarily with those complaints that could not be resolved in the first stage, but it is also possible to request suspension of a certain decision by the RSJ (Berger, 2012, p. 898). Besides the expert supervisory committees every institution has a youth council that regularly meets the director of the institution to discuss the issues of the inmates (Berger, 2012, p. 897). This construction of complaint mechanism gives room for external expertise as well as the voice of juveniles, who can express their views on the possible improvements in the institution.

In *Belgium* there is no special external monitoring body established (D'hondt& Péters, 2016, 189-191). However, there are various, Community-based bodies that control the work of the institutions, such as the Flemish Care Inspectorate or the JO-Lijn Helpline, which build on individual complaints. The Directorate for the Coordination of Public Youth Protection Institutions is responsible for supervision of pedagogical and organizational coordination, however according to the report on Children's Rights Behind Bars of Defence for Children Belgium (2014, p. 58-59) it "does not seem to effectively implement its mission of internal monitoring", because of the restricted capacity. There is a formal possibility for children to submit individual complaints to the Directorate, however this basically never happens. Inspections and investigations are motivated by complaints of other actors in the system and beyond. Children who are sentenced to imprisonment according to adult rules in Belgium, have the same rights to complaint in the adult supervisory committees. These supervisory committees are established in each institution, and they have a minimum 6 members and maximum 10, including at least one judge, one lawyer and one doctor. Members are appointed by the Minister of Justice for 4 years term (Defence for Children Belgium, 2014, p. 68). For children receiving medical treatment special patient rights are applicable (D'hondt & Péters, 2016, 189).

In *England* Her Majesty's Inspectorate of Prisons is responsible for the external monitoring the conditions and welfare of juvenile detainees. Besides this, there is a system of individual complaints in every YOI and other closed facilities. In a YOI the prison is obliged to respond in writing to complaints about the staff within 5 days. In case the child is not satisfied with the response he may appeal to a more senior person within the prison's management, and in case of further dissatisfaction the child may appeal to the Prisons and Probation Ombudsman within 3 months (The Howard League, 2014). CPT notes on the monitoring mechanism that, although "it is important that young persons with potential grievances are able to make themselves heard either through the formal complaints system or through being given an opportunity to express themselves directly to staff (in the presence of their caseworker or a manager if they so desire)", according to the Prisons and Probation Ombudsman, there is lack of confidence of young persons in making a complaint (CPT, 2009, point 110). The complaint mechanism in secure training centres is called 'comprehensive grievance procedure'. Although this monitoring system is established by the Secure Training Centre Rules of 1998, and organised independently from the YOI's, since 2013 the Prison and Probation Ombudsman is the last (independent) forum of appeals in this system as well. The complaint process in secure children's homes is based on the Care Standards Act of 2000 and the Children Act of 1989 (The Howard League, 2014).

Similarly to the English system, in *Scotland* Her Majesty's Inspectorate of Prisons for Scotland is responsible for external prison monitoring. Further monitoring about detention facilities is done by Her Majesty's Inspectorate of Constabulary for Scotland, while the Scottish Human Rights Commission, the Mental Welfare Commission for Scotland, the Care Inspectorate and the Independent Custody Visitors Scotland are also relevant bodies of external control (The Howard League, 2014). The complaint mechanism is also similar to the English system, however in the Scottish system children who are dissatisfied with the managerial response to their complaints may appeal to the Scottish Prisons Complaints Commissioner (Burman et al., 2010, p. 1189).

The external agency of prison monitoring in *Finland* is the Office of the Parliamentary Ombudsman. He is responsible for conducting inspections under the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT) in institutions where persons are deprived in their liberty.[35] He monitors pre-trial detention facilities, immigration detention, psychiatric or social care institutions, child protection units, and care facilities and residential units for elderly and persons with disabilities. By contrast to the well-regulated external monitoring, formalised internal complaint mechanisms in Finnish prisons are reported to be unsatisfying, therefore the CPT recommended to the Finnish authorities to review complaint mechanism and provide the opportunity for prisoners to raise their written complaints at any moment and place and place a locked complaint box in each prison unit (CPT, 2015, point 90).

The most important external monitoring institutions for prisons and juvenile reformatory institutions in *Hungary* are the Ombudsman of Fundamental Rights (AJB) and

35 This assignment is relatively new. The Parliamentary Ombudsman fulfils the tasks of NPM only since the second half of 2015. Source: http://www.oikeusasiamies.fi/Resource.phx/eoa/english/pressreleases/pressreleases.htx?templateId=5.htx&id=1066

the Department of the Child- and Youth Protection of the Public Prosecutor (Rosta, 2014, p. 274). Similarly to the Finnish ombudsman, the Hungarian ombudsman is responsible for the implementation of the National Prevention Mechanism in both reformatory institutions and prison wards for juveniles. The prosecutor shall monitor the lawful operation of the juvenile institutions including the fulfilment of children's rights (Rosta, 2014, pp. 240-241). Juveniles in reformatory institutions as well as the prisons may make individual complaints. According to Section 10(4) of the Act on the Execution of Punishments, Penal Measures, Coercive Measures and the Confinement juveniles may make complaints independently in cases connected to the circumstances of the execution, they do not have to rely on their parents or legal representatives. Complaints shall be made in written form, while oral complaints shall be registered. The institution has 30 days to respond to the complaint. After this response there is no further opportunity to remedy. The complaint mechanism of the reformatory institutions is regulated in detail in the house rules of the institution, the law specifies only the right to complaint against the disciplinary decisions, which shall be answered within 5 days by the director of the institution (Sections 5(h) and 43(c)(4) of the EMMI Ministerial Order 1/2015. (I. 14.)).

V.3.5. Contact with family

Maintaining regular contact with families is of huge importance for juvenile detainees, although it holds a number of potentially problematic issues. In the pre-trial stage it is not only necessary to maintain family bonds, but also to provide active parental protection to the child throughout the procedure. The contact of children with their families may be limited, but only in exceptional cases. In the Netherlands, the police prohibited a boy, who was arrested because of robbery, to contact his mother without any significant reason. The court compensated the arbitrary police order later by lessening the term of the imposed detention by one month (Berger, 2012, p. 900). Concerning the detention facilities in *Finland* the CPT (2015, point 17) reported about children's right violations in the pre-trial term. According to the report a boy of 15 had been interviewed without the presence of his parents, social worker or a lawyer. The CPT recommended that the Finnish authorities take steps to ensure that detained juveniles are not questioned without the benefit of a lawyer and, in principle, of another trusted adult being present and assisting the juvenile.

After its visit in *England* in 2008 the CPT expressed its concerns about the very high numbers of juveniles in custody in England and Wales. They reported that many children were sentenced to such a short period of detention, that was not long enough to address the root causes of the offending behaviour, but it was "long enough to become acquainted with prison culture" (CPT, 2009, point 83). As according to the report juvenile detainees, who evidently came from disrupted families were rather in need of support than in need of short and sharp punishment. Juveniles in the Huntercombe YOI were allowed to send two free letters a week and could have access to the telephone during evening association (i.e. every second day) (CPT, 2009).

Juveniles in *Hungary* can keep contact with their families via telephone (three times a week), post (they may send and receive letters every day) and visits (every two weeks), which are allowed once or twice a month, although with regard to the often big distance between the

place of residence of the family and the prison, it becomes difficult (AJB, 2015, pp. 19-20). Based on the Execution of Punishments Act the juvenile may participate on family conference in every three months that is to be held in the prison building (Section 194). During this session the juvenile and his family members may participate on family therapy appropriate to their needs. In exceptional cases it may take place outside of the prison. Furthermore, in the best interest of the children, same-sex siblings may also be placed together (Section 195).

Similar regulation applies to the reformatory institutions in Hungary (Section 28(2)-(3); Section 37 (3) of the 1/2015 (I. 14.) EMMI Ministerial Order on the Reformatory Institutions). Juveniles may meet their family members and others visitors privately or under supervision, in the institution or at the home of the juvenile's family or relatives (Section 37(1) and 39(2)). Juveniles shall be allowed to leave the reformatory institution once in two weeks for minimum 2 maximum 12 hours, and they can get permission to stay at home 2-5 days long in at most 30 days a year (Sections 362 and 363 of the Execution of Punishments Act).

In the *Netherland*s juveniles have right to receive visitor at least once a week for an hour and under specific circumstances parents are allowed to visit their children after the official visiting hours. Juveniles may also maintain regular contact with their parents freely (Berger, 2012, p. 896).

V.3.6. Deprivation of liberty as a measure of last resort applied for the shortest appropriate period of time

The law of penal procedure is very similar for adults and minors in *the Netherlands*. Children may spend 9 days 15 hours (under 16 years) or 16 days 15 hours (above 16 years) in police cell being transported to juvenile detention centres where they going to spend pre-trial detention (Berger, 2012 pp. 892-893). The prevention of institutionalisation at the pre-trial stage is the responsibility of the prosecutor. In case of minor offences it is explicitly excluded (Liefaard, 2008, p. 396). In case of other crimes the Dutch strategy is to ensure that children are placed in custody as a measure of last resort and for the shortest appropriate period of time to apply as many alternative measures as possible (e.g. Halt) which are reflecting to the control-requirements of the judicial authority while at the same time they offer the opportunity to avoid institutionalisation. Furthermore, the Public Prosecutor's Office adopted the so-called "community sanction, unless..." policy, based on which the prosecutor shall try to settle the case and initiate community service and/or treatment of the juvenile before considering deprivation of liberty. If a case referred to court it is still more likely that children spend their pre-trial arrest at home or at a foster family. According to Section 493 par. 1 of Code of Penal Procedure the judge has to consider suspending the detention (Defence for Children NL, 2014). Imposing fines in juvenile cases is also possible in the Netherlands, but in contrary to the Finnish practice it is rarely used (Liefaard, 2008, pp. 392-394).

Based on the YPA in *Belgium* a priority shall be given to maintaining the minor in his living environment before considering placement in a closed facility. In case of detention the open regime should be favoured over a closed regime detention (Defence for Children BE, 2014). An exception from this rule is the case of asylum-seekers. In the case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (13178/03) a five years old child had been held in

centre for illegal adult aliens before being sent back to Congo, because she had no document that would entitle her to enter Belgium. The ECtHR found that the decision of the Belgian led to inhuman and degrading treatment of the child, and violated Article 8 of ECHR on the right for private and family life. The conditions in the detention centre for illegal aliens were inappropriate for a child of this age, and there were no steps taken to reunite the child with her family (at the time of the process her mother lived in Canada). In another case a mother with her three children had been detained for almost four months in similar facility (Kanagaratnam v. Belgium, no. 15297/09). The ECtHR found that the unsuitable detention for children led to the violation of their right to liberty and security and meant inhuman and degrading treatment.

According to Section 106 of the Penal Code of *Hungary* the judge has to apply the appropriate measure or punishment to the juvenile that serves his „education and protection" the best. When imposing the sanction, the judge is bound to consider applying measures rather than punishments, and he is only allowed to impose deprivation of liberty if the goal of the measure or punishment cannot be reached otherwise. Accordingly, the theoretical order of consideration is: (1) non-custodial measure, (2) custodial measure, (3) non-custodial punishment, (4) custodial penalty. This order is not necessarily compliant with the requirement of using deprivation of liberty as a last resort, however it must be noted, that it is merely caused by the dichotomy of measures and punishments in the Hungarian penal law tradition. An order that perceives non-custodial punishments more lenient than custodial measures would confuse the theoretical consent about preferring the application of (educational) measures rather than the (repressive) punishments.

In *England* the Legal Aid, Sentencing and Punishment of Offenders Act 2012 currently raised the remand threshold to ensure that children are not deprives in their liberty unnecessarily, although according to the Howard League (2014) most of the children held in remand still receive non-custodial sentences from the court. Nevertheless, the number of children in custody has dropped substantially in recent years and the remand threshold had been raised. A detention and training order should only be used as a measure of last resort for offences that are considered so serious as to warrant a custodial sentence or, where a violent or sexual offence has been committed, to protect the public. The sentence must be for the shortest period of time (Detrick et al., 2008, p. 45).

Table 26 shows the maximum duration of different forms of deprivation of liberty in the countries under examination. I will introduce the legal maximums, however it must be noted that legal maximums do not say anything about the distribution of the lengths as according to the sentencing practice. Regarding to the data on pre-trial arrest it must be noted, that the comparability of the duration mentioned at different countries is moderate. While police custody clearly refers to the period during which children may be restrained without the revision by a judge or a prosecutor, the pre-trial period should refer to the maximum term of detention during the penal procedure. However, with regard to the different legal approach on this period, it can happen that even this period is divided to different parts.

Table 26. Comparison of the length of different forms of deprivation of liberty

	POLICE CUSTODY	PRE-TRIAL DETENTION	MAXIMUM CUSTODIAL SENTENCE PRIOR 14[3]	MAXIMUM CUSTODIAL SENTENCE 14-16[3]	MAXIMUM CUSTODIAL SENTENCE PRIOR 16-18[3]
Belgium	12 hours (in case of an immigrant without valid papers: 24 hours)[6]	1 month [6]	Custody not available	Custody not available	30 years of imprisonment
England	24 hours		Detention for life	Detention for life	Detention for life
Finland	12 hours	24 hours	Custody not available	180 months (15 years)	180 months (15 years)
Hungary	24 hours[5]	12 months under 14 years and 24 months above 14 years[2]	Custody not available	120 months (10 years)/ 180 months [4]	180 months (15 years)/ 240 months[4]
Netherlands	3 days (and additional 3 days if prolonged)[1]	90 days	A maximum of 12 months from the age 12 (in detention)	12 months	24 months (or as an adult sentence 30 years)
Scotland			Custody not available	Custody not available	Detention for life

Sources: European Commission (2014); [1]Berger, 2012 pp. 892-893; [2] Code of Penal Procedure of Hungary; [3] Killias, Redondo & Sarnecki, 2012, Table 11.5.; [4] Penal Code of Hungary; [5] Act on the Police, Section 38(1); [6] Defence for Children BE, 2014;

V.4. Petty crimes and antisocial behaviour

During one of my interviews I discussed the role of the juvenile justice system in petty criminality and the appropriate measure of reaction on minor child criminality with my interviewee. In this conversation I came across a story that put petty criminality into a new perspective. The story was as simple as follows: a boy was jealous of his classmate because of having an expensive biking helmet. He did not only express his jealousy for the luxurious item with words, but at some point he decided to punish his classmate by urinating into the helmet. The act had been admitted by the boy, and the price for the (possibly) broken helmet was paid by his parents soon, therefore the actual harm had been reimbursed. The only question that remained, was the way we should treat the boy, who felt entitled out of pure jealousy to urinate to somebody else's helmet. My interviewee found that the society cannot look over such incivilities. The boy should have to face the interrogation at police, followed by an education measure, although surely excluding institutionalisation, and formally apologise for his action. I have concerns about this approach because of two reasons. First, with regard to the idea, that this act has not been committed out of pure malicious intent, but because of simple discomfort caused not only by the price of the helmet, but also the socio-economic place of the two children. Second, that I believe that the justice system is not the right place to treat those children who express their discomfort in similar situations in a socially inappropriate way, as it often happens in case of petty offences. Especially not, if a similar case of an adult would probably not reach the justice system at all, and would be solved in an informal setting. Even more worrisome, that although the appropriate measure suggested here was a measure of diversion, in many countries the lack of appropriate alternatives or better policy results in locking-up children with the purpose of deterrence.

During my research I have experienced significant inconsistencies among policies regarding different aspects of juvenile criminality, among which the least consistent area was the regulation and implementation of the reaction to petty criminality and antisocial behaviour. The huge variety of responsible authorities, measures and sanctions, targeted behaviour and the manner and types of reactions show that European countries face huge difficulties with both defining the behaviour and responding to it. The concerns about the contemporary solutions in Europe are suggested by the number of concerns raised by Committee on the Rights of Child in its concluding observations (see Chapter III). Countries examined in this research do not represent exceptions from those jurisdictions, which are subject of criticism. Among other countries the United Kingdom, Belgium and Hungary were also recommended to place fundamental changes in policy and law regarding petty criminality.

In *Belgium* the response to antisocial behaviour is regulated by local municipalities since 1999.[36] The primary administrative sanction is fine, which may be imposed to children from the age 14 since 2013. Youth and young people, who are seen as threat to public order rather than subjects of preventive strategies, became an important target group of the administrative control and interventions in the past decades. Authorities which sanction

[36] Based on the presentation on "The preventive turn in the policing of youth behavior in public space" of Anneke Evenepoel on 13 September 2014 on the Annual Conference of the European Society of Criminology

behaviour that is perceived as antisocial are likely to trespass the limits of rational intervention (e.g. through imposing sanctions to behaviour that shall be perceived as normal), and to select subjects based on their personal characteristics rather than their acts (e.g. through targeting groups of youngsters generally seen as 'risk population'). The Committee on the Rights of the Child raised concerns about the Belgian system dealing with petty offences because here "municipal administrative penalties may be imposed on children for antisocial behaviour outside the juvenile justice system" avoiding guarantees provided in the latter. Belgium had been recommended to assess the compatibility of this system with the UNCRC (CRC/C/BEL/CO/3-4, points 82(g) and 83(h)).

In the *Netherlands* the main instrument of the control of youth criminality became the alternative sanction called Halt, which is an important police-level instrument of maintaining 'public order'. As it is mentioned in Chapter IV, about one third of the children caught by the police are diverted to Halt nowadays. This measure may be applied for children between 12 and 18 years committing the following criminal acts of the Dutch Penal Code: impairment (Section 141(1)), misuse of emergency numbers (Section 142.§ (2)), vandalism and graffiti (Section 350), (minor) theft (Sections 310-311.§), recuperation (Section 416-417), fraud (Section 326), public nuisance (Section 424), public alcohol-consuming (Section 453), trespass (Section 461). Furthermore: disturbance on a vehicle of public transportation (Dutch Public Transport Act, Sections 72-72), possession of illegal fireworks, possession of more than 10 kg of fireworks, etc. (Dutch Fireworks' Order, 1.2.2, 2.3.6 and 1.2.4), truancy (Dutch Education Act, Section 3(3) and (4c)), and distractive behaviour described in other laws.[37] As the above list shows, the misbehaviour targeted by Halt is not restricted to (minor) crimes, but it reacts to other forms of antisocial behaviour, such as truancy, nuisance and the illegal use of fireworks. The maximum amount of damage that can be established in the diversion process is 150 euro in the criminal cases, and 900 euro for the antisocial behaviour under the Dutch Public Transport Act and the Dutch Fireworks' Order (up to 4500 euro in total/case). The Halt process corresponds to the requirement on diversion measures of the Committee on the Rights of Child: it is used only when there is compelling evidence that the child committed the alleged offence, the child freely and voluntarily admits responsibility, and the admission will not be used against him/her in any subsequent legal proceeding (General Comment No. 10, point 27). In fact, the intervention is not registered in the national judicial documentation, and therefore a completed intervention excludes conviction and the act will not appear in the criminal record.

Although the Halt programme is the most commonly used sanction for minor crimes and antisocial behaviour, its biggest success seems to be that it moderates the caseload of petty offences at the police. The WODC conducted research about the effectiveness of the Halt measure in 2006, and found that most elements of the project, such as type and duration of punishment, the number of talks, a direct link between punishment and crime, and a claim settlement did not have any effect on the recidivism of the juveniles. Procedures were only reported to be effective in terms of preventing recidivism in those cases where the offender apologised from the victim (Ferwerda et al., 2006). The actual effect of Halt differed also

[37] Source: Voorwaarden Halt-straf. Retrieved from http://halt.nl/media/1062/140825-voorwaarden-halt.pdf (25/09/2016)

according to the background (for instance the area of residence, family) of the child that suggests that recidivism depends on the risk factors already existing in the child's environment in most of cases, rather than the intervention itself. As a conclusion of this study the WODC recommended the revision of the measure. The methodologies used in the intervention had indeed been revised multiple times. In the current system the focus of intervention shifted from the goal of physical restoration towards mental reformation of the child through educational intervention and the apologies offered to the victim. The new approach includes involving the parents of the child, confronting him with the consequences of his behaviour and offering personalised intervention (Uit Beijerse, 2013, pp 75-78). In practice often both children and parents have to face the institutionalised shaming because of the minor adolescent misbehaviour.

In 1999 the STOP measure was introduced for those children under 12 who were involved into minor criminality (Uit Beijerse & Swaaningen, 2006, p. 67). The programme was similar to Halt, both in its goals and tools. It aimed to prevent recidivism through educational activities to children, supplemented by a shorter period of parenting assistance by youth care services. The child was supposed to admit the misbehaviour, and together with his parent(s) consent to comply with behavioural rules and supervision by the Halt Office (Van der Laan et al., 2008, p. 21-34). The programme missed to correspond to human rights' standards, when it required confession of a crime where the child was legally not yet able to commit a criminal offence, and retracted the child into the system designed for actual juvenile offenders. It had been abolished in 2009.

The regulation of petty criminality and incivility in *England* had been a matter of debates since 2000, when police warnings called 'cautions' had been replaced by a new statutory regime of formal warnings which are recorded and after the third occasion that a police officer had to warn the child any further offending will be reported to the prosecutor (Dignan, 2010, p. 365). The Bulger-case is often blamed for the significant turn of the direction of public policies. Due to the media-attention to this case signs of moral panic emerged in public debates about juvenile justice and the tone of political slogans became clearly retributive, such as "prison works" and "condemn more, understand less" (Muncie & Goldson, 2006, p. 36). The new Crime and Disorder Act of 1998 reflected perfectly to the wave of punitive thoughts when it began targeting families and children under MACR with measures of social control for their 'own good', and assigned institutional reactions to a wide range of disorderly behaviour. These, according to the UK Government in 1999, aimed to contribute to "the right of children to develop responsibility for themselves" (Muncie & Goldson, 2006 p. 38). Control, that became general, did not lose sight of the smallest either: the Child Safety Order aimed to impose (welfare) control measures to children under 10 who's behaviour was delinquent, harassing, disruptive, or who could be labelled as 'at risk' of offending for other reason (Graham & Moore, 2006, p.73). In theory the order aimed to support and protect the child, but in practice it exercised pure control through requiring him to attend school, be at home at certain times or stay away from certain people or places. An example to the welfare interventions about which Muncie and Goldson (2006, p. 35) note, that they "never replaced the punitive, but rather acted to expand the range of interventions and disposals available to the court."

The peak of the legislation against incivility was the enactment of the Anti-social Behaviour Acts in 2003 in England and in 2004 in Scotland. Based on the Act a variety of Anti-Social Behaviour Orders (ASBO's) could be imposed for behaviour that is labelled as antisocial, uncivil, risk-behaviour etc. One of the most important target group of the ASBO's was 'antisocial' youth above 10, who may be subject to an ASBO e.g. because of truancy or causing public nuisance. However the acts do not imply serious justice response at first sight, those who did not comply with the order may risk substitution of a care order or received a custodial sentence of at most 5 years. Regarding to the latter possibility Rodger notes, that it has been "perhaps the biggest controversy surrounding the use of civil lawto control anti-social behaviour", because it is a criminal punishment imposed for an act that is rather uncivil than unlawful (Rodger, 2008, p. 13).

The genuine preventive nature of ASBO and its compatibility with human rights have constantly been questioned during the past decade. According to Rodger (2008, p. 13) "the principle driving the Anti-social Behaviour Act is that there is an obligation on public authorities or agencies acting as semi-public authorities to protect the human rights of the majority of tenants affected by an anti-social minority". He highlights two guiding elements drawn from children's rights documents: (1) the obligation of the state to protect children from the influences that might encourage their engagement in criminal behaviour, and ensure their opportunity for a productive life, and (2) the requirement of avoiding the criminalisation and penalisation of children for a behaviour that does not cause serious harm (Rodger, 2008, p. 127). In 2005 the High Court ruled that this policy breaches the obligation to treat each child as an autonomous human being (Muncie & Goldson, 2006, p. 39). The Committee on the Rights of the Child has also expressed its concerns about the ASBO's application to children, in particular „(a) At the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences; (b) That ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system; and (c) That most children subject to them are from disadvantaged backgrounds". Therefore the Committee recommended to the UK to abolish their application to children (CRC/C/GBR/CO/4, points 79 and 80). According to the Committee some of the possible ASBO's do not only risk the labelling and criminalisation of children for non-criminal acts, but they restrict their freedom of movement and peaceful assembly (CRC/C/GBR/CO/4, points 34 and 35). The Committee had also drew the attention to the phenomenon that the steady reduction in playgrounds occurring has the effect to push children into gathering in public open spaces, a behaviour that, however, almost automatically leads to the behaviour that is to be prohibited by ASBO's (CRC/C/GBR/CO/4, point 68).

In 2014 a comprehensive law, the Anti-social Behaviour, Crime and Policing Act 2014 (ABCPA) reformed the regulation on incidents of crime, nuisance and disorder – such as litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. The new law introduced 'injunctions' and 'Criminal Behaviour Orders' (CBO) replacing ASBO's. *Injunctions* are civil orders of (youth or adult) courts that aim „to stop or prevent individuals engaging in antisocial behaviour quickly, nipping problems in the bud before they escalate" (Home Office, 2014, p. 20), while *CBO's* are "issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals

who are also engaged in criminal activity" (Home Office, 2014, p. 27). The latter measure can only be applied by the Youth Court to the proposal of public prosecutor who needs to consult it with the local YOT. Its consequence may be detention or training order for up to 2 years (Home Office, 2013). Both measures may be imposed to a person above 10 years (the application of injunctions is based on Section 1(1) of ABCPA, while CBOs are imposed with regard to the criminal offence, and therefore MACR is applicable). The focus of the law is on victims and their needs to formal intervention to particular behavioural patterns in the given area. The so-called community trigger and community remedy gives the opportunity to victims, communities and local agencies of ASB to deal with the problematic issues in a manner that suits the community the best (Home Office, 2014, p. 2-15).

Preventing the escalation of problems in an informal way rather than imposing repressive or restrictive measures to youth shows another shift in policy. In the criminal procedure the prosecution must investigate the view of the local YOT before applying for a CBO, although only if the offender have not reached 18 years yet when the *application is made* (Section 14(1)(a) and Section 22(8) of ABCPA). He also has to inform any other body or individual that is already working with the child, such as NGO's (Home Office, 2014, p. 23). According to the guidelines of the Home Office on the application of the rules YOT's are important in getting the young person to adhere to the conditions in the injunction and that they are understood. The conditions will be overseen by a responsible officer in the YOT or other agencies responsible for children. The guidelines also instruct the authorities to contact the parents or guardians of underage people in case an informal warning is applied against them (Home Office, 2014, p. 19). Parenting orders are not advised to these cases, however the role of Anti-social Behaviour Contracts and parenting contracts is assumed to be useful in preventing further incivility. As a response to the previous concerns regarding the ASBOs, the Memorandum of the Home Office on the European Convention on Human Rights (2013) highlights that there is „express provision in relation to those aged between 14 and 17 who breach their injunction in which situation a short (three month) detention order is available only as a measure of last resort in compliance with the UN Convention on the Rights of the Child ("UNCRC")". A detention order cannot be imposed for 10 to 13 year olds.

ASBO's are regulated in *Scotland* by the Anti-Social Behaviour Act 2004, which allows the imposition of the orders for children from the age of 12. The ASBO's in Scotland complement the welfare-oriented Children's Hearing system and therefore the repressive approach of ASBOs is not particularly popular. Furthermore, since the detention of children under 16 in Scotland is prohibited by law, the consequences of the breach of the order are significantly less harsh for most children than they were in England (Burman at al., 2010, pp. 1171-1172). ASBO's are reported to be very rarely imposed to children in Scotland. According to Burman and colleagues (2010, pp. 1182-1183) the agencies responsible for ASBOs in Scotland use it only when all other possibilities have failed. As an alternative they prefer to apply parental agreement contracts, intensive support, parenting classes, mediation, etc. Almost three quarters of the Anti-social Behaviour Contracts involve children under the age of 16.

The *Hungarian* regulation on antisocial behaviour separates criminal acts from petty offences. This distinction is common in post-socialist countries (see Chapter VI), where this line had been traced originally between those criminal acts, which are "harmful for the

society", and those minor deviances, which are not. The latter group is called on a various names, such as antisocial behaviour, misdemeanour or administrative offence (hereinafter: administrative offence), and covers inter alia minor theft (under the limit of 50.000 Ft, which equals approx. 160 Euros), speeding, unauthorized hunting, begging, etc. The procedure is traditionally simpler in these cases than in a criminal case, and the most commonly used sanction is fine.

In the summer of 2010, the Parliament passed the amendment, which deleted the prohibition of confinement in case of administrative offences committed by children from the Act on Administrative Offences (Lévay, 2012). This legislative act introduced the measure of *short sharp shock* against children to Hungarian law: since 2010, a clerk may order at most 45 days of confinement for children who committed minor thefts, or who had been forced to prostitution and caught in act. The first problem following from the legislation is that in light of the list of measures and punishments set in the Criminal Code, the maximum of one and a half months of deprivation of liberty does not correspond to the gradation of criminal sanctions. The primacy of non-custodial punishments does not prevail, and in some cases it is even worth to commit a crime instead of an administrative offence to avoid confinement through being reprimanded by a judge. Furthermore, the new regulation is clearly in violation of Article 37 b) of the UNCRC, where deprivation of liberty is expressly required to be the matter of last resort for only the shortest appropriate period of time. The rationale behind the international requirement is based on the experience, that deprivation of liberty and the additional detriments cause irreversible damage in the development of children. In this case, children are necessarily missing from school without any chance to follow their school curriculum during the detention, and must bear stigmatisation from peers and institutions after the detention. Thus, the short confinement measure is only enough to cause unreasonable harm, whereas it does not offer any supportable benefit in the child's development.

Looking at the regulation from a holistic approach, again, discrimination of poor families who are unable to pay the fine, and who are too vulnerable to defend themselves in any legal procedure, became also more likely. Since fine is convertible to confinement, those, who are less fortunate in financial terms, are more likely to agree with a short confinement than those who can easily afford to pay the fine. Furthermore, financial interest of the state contradicts to the regulation as well. After a case of a 17 years old boy who was arrested and locked-up for 20 days because of stealing two bottles of bitter, Klára Kerezsi (2014) counted the expenses of the detention compared to the price of the shot. The actual damage caused by the administarive offence was 1 477 Ft (5 Euros), while the procedure cost 188 720 Ft (660 Euros). It is easy to conclude, that the expenses of the measure were irrationally high compared to the value of bottles of bitter. Taking into consideration, that out of the 20 days of confinement the child spent 3 days in the police station together with adults, he did not have time to join school classes in the prison or follow the classes at his secondary school, the proportionality of the measure raises concerns.

In contrast to the measures of the administrative law, child protection perceives these offences as warnings to deeper problems whether in the family or in the child's environment. If this is found to be the case, the child protection authority is entitled to take the child into 'open care', which refers to an agreement concluded between the authority and family (the child) on the changes in behavioural patterns required and to be followed in the future, such as

letting the child to school or restricting his peer relations. This supervisory measure offers the opportunity to revisit problematic issues in the family with the help of professionals, and to assess the steps to be taken both by children and the parents. The problem, which led to the aggravation of consequences concerning minor acts may be, that this procedure often missed to provide comprehensive support in achieving promises. The authority registers the child as being 'at risk', but nothing visible happens, and children act accordingly. This indicates the incapability of child protective authorities.

With regard to the serious violation of children's rights, the Ombudsman for Civil Rights expressed his worries concerning the new regulation, which, in his opinion, was conflicting with the children's rights to protection and personal freedom. He asked the Minister of Home Affairs to draft new regulation respecting children's rights, and focusing on the support of personal development of a child. Hungarian NGO's also expressed harsh opinion on the new law in the shadow report on the implementation of the CRC. According to the organizations "it can be clearly stated that Hungary is in violation of its international legal obligations by its detention of juveniles for petty offences and crimes; its justice system can hardly be considered child-friendly and even progress towards it is hardly evidenced" (CRC Alternative Report, 2012, p. 53).

Since, in spite of the warnings by the Ombudsman (Case AJB-2324/2012) and complaints of NGO's, the very new Act on Administrative Offences came into force on 15 April 2012, which still allows the previously criticized sanctions. In addition, due to the changes in the legislation on public education and labour laws from 1 September 2012, children may be punished with confinement from the age 14, however community work measure may not be imposed under 16. The Ombudsman called this inconsistency "absurd" in his report on child-centred justice (Report on Child-friendly Justice, 2014, p. 22). He requested Constitutional Court review on certain provisions of the Act because he found the institutional response disproportionately hurtful compared to the underlying behaviour. The decision of the Constitutional Court (Case II/2806/2012 of the CC) did not only provide an ambiguous explanation on the primacy of public safety over the best interest of the child, but stated, that locking up apparently serves crime preventive goals. Despite the reasoning of the Ombudsman of Fundamental Rights based on requirement of primacy of the best interest of the child (Art. 3 of the CRC), further requirements for juvenile justice (Art. 37 and 40 of the CRC), and the principle on gradation of measures, the majority of the members of the constitutional body did not consider confinement of children for at most 45 days a violation of either constitutional or international rights. The judges, however, seemed to be ascertained about negative tendencies in juvenile delinquency, and justified the 'crime preventive' necessity as a reason for allowing this measure. Moreover, they found it reasonable for "protecting property and public safety" (Case II/2806/2012 of the CC). In his minority report to the Constitutional Court decision, Judge Lévay presented a different reading of the CRC. He stated that the regulation was conflicting with the requirements of last resort and shortest appropriate period of time of the deprivation of liberty (Case II/2806/2012 of the CC). He quoted General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Art. 19, 28 (2) and 37 of the CRC, inter alia), according to which "interpretation of a child's best interests must be consistent with the whole Convention", and "it cannot be used to justify practices, including

corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity" (General Comment Nr. 8, 2007: Para. 26). The Committee on the Rights of the Child clearly shares the latter minority opinion, since it recommended to Hungary to "abolish the practice of sentencing children to prison terms for petty crimes, in particular by eradicating the practice of converting fines to prison terms" (CRC/C/HUN/3-4, point 57 (d)). According to Lévay non-custodial measures should be provided by the system either as procedural alternatives or as educational measures.

Although *Finland,* as member of Nordic countries which keep to welfare policies and the rather lenient treatment of offending youth, there are elements of public policies that have considerable impact on minor crimes. According to Satka and colleagues (2007) minor criminality of Finnish youth is decreasing primarily due to the effective situational tools of prevention (guards in public spaces surveillance in shopping malls etc.), while children become also even less tolerant towards antisocial behaviour. Control, however, is informal in the Finnish practice and continues to focus on prevention rather than repression.

V. 5. Discrimination

Based on the concluding observations of the Committee on the Rights of the Child, discrimination of children on racial or ethnic grounds is a general problem in Europe. According to the concluding observations the target of discriminative policies, measures and institutions are children of migrant origin primarily in Western Europe and Roma primarily in Eastern Europe. There is much to say about discrimination of groups of children, and all those mechanisms in the European societies, that generate and maintain social exclusion, hopelessness and vulnerability through generations, and the way this situation leads to prejudices, fear, and social conflicts, and thus, discrimination. Discrimination of children in and through the control of criminality is an important part of the chain of exclusion. Discrimination of particular groups is not only an important malfunction of the justice system, but an important source of the (presumed or real) need for control as well. Thereby is this problem of extreme complexity, that extends the criminal policies and actual institutions and that needs to be addressed not only in the field of justice but in every segment life. Here I provide two examples on how discrimination manifests in the control of child criminality.

V.5.1. Discrimination of immigrant youth

The *Netherlands'* peculiarity regarding the issue of discrimination is that the authorities collect data on the ethnic minorities, not only regarding criminality but also in every aspect of life. According to Uit Beijerse and Swaaningen (2006, p. 70) focusing on the ethnic background of offenders in public policies was a taboo-issue in the Netherlands in the 1970's and 1980's, when the ethnicity of offenders was studied in context discriminatory practices within the criminal justice system. In the 1990's ethnicity became "just a reflection of reality" (Uit Beijerse & Swaaningen, 2006, p. 71). As a result of the policy turn on this question the police registers the ethnic background of the offenders, what generates a number of problems. Concerns can be raised first of all about the definition of immigrant and non-immigrant groups. According to the Central Bureau of Statistics of the Netherlands *allochtonuos* is a person who has at least one parent who was not born in the Netherlands, while *autochtonuons* are those who can prove that both of their parents were born in the Netherlands, regardless to their own birthplace.[38] Further data is collected about the birthplace of the person to make it clear if he is a first generation or second-generation allochtonuons, and the land of origin of the parents. Children, whose parents were born in Europe, North-America, Oceania, Indonesia or Japan, are registered as "Western" immigrants, while people from the rest of the world count as "non-Western". This differentiation has an expressly negative reflection in the common talk, where the word *"allochtoon"* refers to those ethnic

[38] Interestingly the registration is strictly based on the place of birth, disregarding nationality. This means, that King Willem-Alexander of the Netherlands is also allochthonous, because his father, Prince Claus, was born in Germany. The same applies to the royal heir apparent Princess Catharina-Amalia, whose mother, Queen Maxima was born in Argentina. See the definitions at http://www.cbs.nl/nl-NL/menu/methoden/begrippen/default.htm?conceptid=37 and http://www.cbs.nl/nl-NL/menu/methoden/begrippen/default.htm?ConceptID=315

groups who are living in poor districts of urban areas, and are discriminated against in every aspect of life (Uit Beijerse & Swaaningen, 2006, p. 71). As opposed to this group highly educated immigrants who live in urban centers are distinguished by being called "expatriates" or "expats".

The incontestable advantage of the data collection on ethnic background is that it makes possible to reveal some of the controversies in the justice system, such as disproportionate convictions and overrepresentation in detention of those who are perceived as 'aliens' in the society. In the Netherlands data provides evidence to the overrepresentation of Moroccan, Antillean and Surinamese youth in the juvenile justice, from which groups Moroccan boys are basically the most likely to be registered as offenders regardless which generation they belong to (Weerman, 2007, p. 278). In order to find satisfactory explanation to the phenomenon of increased registered offences of youngsters from ethnic minority groups several researchers studied the correlation between certain types of deprivation and attitudes of children with ethic background (Junger-Tas, 2001; Weerman, 2007, pp. 286-288). However, only a few studies approach the issue from the perspective of discrimination. Komen and Van Schooten (2009) examined a sample of 324 court files relating to 186 ethnic minority and 138 native Dutch juvenile defendants, among which 85 girls and 266 boys, in criminal cases against juveniles between 2003 and 2004. The files came from a major-city court district (226) and a more provincial court district (98). The research aimed to provide a pragmatic explanation to the tendency that juveniles of ethnic origin are punished more severely than Dutch juveniles for the same crimes. Their analyses revealed that "longer average periods of detention imposed on ethnic minority juveniles can partly be explained by the fact that the experts advising the courts interpret delinquent behavior on the part of these youngsters differently from the way they interpret behavior of comparable seriousness in their Dutch peers" (Komen & Van Schooten, 2009, p. 98). According to the researchers the experts are likely to attribute ethnic minority youth to negative internal factors, and less likely to highlight positive internal factors in their cases. Experts also describe interviews with ethnic minority youth more difficult than those with Dutch natives. Therefore they also estimate higher risk in their assessment.

Policies and available control mechanisms that give room for coercive practices are the most effective mediators of discrimination. The Dutch juvenile justice system – being truly the most experimental system in Europe – has and had institutions that represent these practices. The STOP measure (see under 6.5.1 of this Chapter) was introduced for children below 12 years who are involved to minor criminality (Uit Beijerse & Swaaningen, 2006, p. 67). This programme fit very well to the idea of using 'persuasion and coercion' (*drang en dwang*) against the population that is unlikely to change its behavioural patterns. After its broad evaluation in 2009 the measure was abolished in 2010 (Van der Laan et al., 2009).

V.5.2. Children on the move

With the open borders and free movement in Europe, and in particular with the migration of growing amount of refugees in the past years discrimination of groups of people, and in particular children became a featured transnational issue. Children of Eastern European origin, who are often labelled as "mobile bandits" and "Roma", are an emphasized target

group of this phenomenon (Siegel, 2013). Primarily Bulgarian and Romanian children of presumed Roma ethnicity are accused to be trained to steal and beg from a very young age, and in order to make use of this knowledge be transported to Western Europe by their families or traffickers (Siegel, 2013).

Concerns about children of foreign nationality who are bagging on the streets and commit shoplifting, pickpocketing and other minor offences are growing in the Netherlands and in Belgium. An international expert group on children's rights and exploitation of children conducted a research about this phenomenon in 2014, where they aimed to reveal the causes of vulnerability to child trafficking and exploitation, study the available protective procedures as they are stated on paper and applied in practice and reflect to the policies that are meant to tackle this issue. The main sources of vulnerability that had been discovered in the study on the *'Vulnerability of Bulgarian and Romanian children to trafficking in the Netherlands and in Brussels'* correspond with the sources of social, economic and domestic vulnerability of children in Eastern Europe (De Witte & Pehlivan, 2014, p. 23-26). The most significant characteristics regarding the socio-economic status are the high geographical mobility, lack of stable housing, unemployment and dropout from school. In addition to this, parents are often abusive, have addictions, conflicts and bad health. As according to the findings of the study, Roma ethnicity implies additional factors of vulnerability, such as losing perspectives because of the excluded situation, having to work for the family in a young age, being subject of an informal marriage arrangement or being 'sold' to traffickers. Conclusively the study suggest that the vast majority of the children trafficked to Western Europe and exploited in organised crime are Roma, although there is no evidence available to this matter, since children are registered by the police and other organisations based on their nationality and not on their ethnic background.

Children on the move, who are arrested by the police because of committing petty offences, may end up in four different trajectories:

> (1) if a child who committed a crime has reached the age of criminal responsibility and he is unaccompanied[39] he may be held responsible for the crime and at the same time the necessary child protective measures have to be taken to identify and protect him;
>
> (2) if a child who committed a crime has not reached the age of criminal responsibility and he is unaccompanied the necessary child protective measures have to be taken to identify and protect him;
>
> (3) if a child who committed a crime has reached the age of criminal responsibility and he is staying abroad with his family he may be held responsible for the crime and child protective measures may take place;
>
> (4) if a child who committed a crime has not reached the age of criminal responsibility and he is staying abroad with his family, child protective measures may take place.

[39] Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so (General Comment no. 5, point 7)

All trajectories imply problematic procedures. In trajectories (3)-(4) authorities can only act to protect the child if there are concerns about the well-being of the child if he remains in the family. Although committing a petty offence is not necessarily a sign of need for child protective measures, more detailed information about the family background can provide evidence on abuse or exploitation. In trajectories (1)-(2) a lot more information and intervention is necessary for the authorities to settle the child, and determine his best interest, therefore they imply multiple parallel procedures and actions that have to be taken, primarily the followings:

- **Police investigation**: These children are *delinquents,* whose acts shall be investigated and responded by the relevant authorities. When doing so authorities have to take into consideration the age of the offender, the gravity of the act and the most adequate control-intervention available. The execution of this intervention may be difficult in case of unaccompanied and unidentified children, who do not speak the language and whose place of residence has to be established before the measure would begin. The non-discrimination principle of the UNCRC applies similarly as in any other procedure. As according to the Committee on the Rights of the Child: "policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option" (General Comment no. 5, point 18).
- **Child protective procedure**: These children can also be *(suspected) victims of child trafficking and exploitation*, which implies, that they shall be treated as a victim rather than as a delinquent. Child protective measures shall take place, among which first appointing a legal guardian, second placement in appropriate institutions, and third a treatment measure that respond to the nature of their victimisation. These measures often fail already at the beginning, because children placed in open institutions are likely to run away as soon as possible.
- **Identification**: If the child is unaccompanied his official identification may require a lengthy international procedure, where authorities communicate with the country of origin via embassies.
- **Determination of the best interest of the child**: The legal guardian shall take care about contacting the relevant authorities in the country of origin, and collecting information about the perspectives of the child in case of repatriation. The elements of consideration in determination of the best interest and finding a durable solution are listed in General Comment No. 14: (a) the child's views, (b) the child's identity, (c) preservation of the family environment and maintaining relations, (d) care, protection and safety of the child, (e) situation of vulnerability (f) the child's right to health and (g) the child's right to education. The balance between these element depends on the particular case, the weight of each element depending on the others. According to the Committee in the Rights of the Child "not all the elements will be relevant to every case, and different elements can be used in different ways in different cases" (General Comment no. 14, point 80). Nevertheless, the determination of what is in the best interests of a child on the move "requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and

linguistic background, particular vulnerabilities and protection needs" (General Comment no. 5, point 20).

- **Repatriation**: If the legal guardian decides to repatriate the child, he has to contact the relevant authorities that provide help in the safe return of the child.

The core element of every trajectory shall be the well-being and "well-becoming" of the child. This (theoretically) primary aspect of the procedure is easily overlooked and disregarded, and the authorities who do not speak the language of the child aim to repatriate him and his problems as soon as possible to the country where he is – at least – understood. Thanks to the media attention on specific cases of travelling Roma-families and gangs that commit crimes in an organised setting, the approach of the public on the phenomenon is oriented to the problematic issues in police investigation, such as the international, mobile and organised nature of specific acts, and the possible Roma ethnicity of the offenders. However, the Roma ethnicity of the child should not be an indicator of being treated in a certain way by public authorities, it seems typical. There is little attention paid to the fact that the continuously repeated ethnic background is only part of a cultural determination of the child, not the primary reason of his behaviour. Other factors, such as trauma because of the exploitation, lack of appropriate education, lack of parental supervision and healthy family-relations are only mentioned when they are used to establish the connection between the manner of committing the criminal offence and the child's vulnerabilities.

In a procedure, where attention is paid to the deed instead of the needs of the victim the determination of the child's best interest can hardly be effective. Information about the child and his family gained from the child and through cooperation between the responsible authorities in different countries should prevail in the procedure. This is the only way to find a durable solution that prevents the re-offending and the revicimisation of the child.

V.5. Specialisation and training

Concerning to the implementation of children's right in the juvenile justice system it is of significant importance that those lawyers, social workers, psychologists and other professionals who deal with children have relevant knowledge about the development of children, are aware of the children's rights requirements and appropriate practices in juvenile justice and engage in applying them. While knowledge on child development and practices is a question of training, the engagement to the implementation of children's rights requires the attitude that holds the best interest of the child as primary consideration. The specialisation of justice authorities and courts ensure that professionals who received special education about children are dealing exclusively with juveniles and engage fully in implementing the international requirements as appropriately as possible. Specialisation also guarantees the establishment of expert teams within institutions which are able to discuss problematic legal questions in merits and provide effective help to each other in interpreting certain requirements.

Based on Article 40(3) of the UNCRC the Committee on the Rights of the Child sets out the basic provisions of the organisation of a comprehensive juvenile justice system (General Comment No. 10, points 91-95). According to the General Comment these provisions are applicable to every procedure that involves children in conflict with the law, regardless to the form and diversity of the legal regulation. In the opinion of the Committee a comprehensive juvenile procedure requires "specialised units within the police, the judiciary, the court system, the prosecutor's office as well as specialised defenders or other representatives who provide legal or other appropriate assistance to the child" (General Comment No. 10, point 92). In order to ensure the practical specialisation of judges, the Committee recommends the establishment of specialised juvenile courts whether in the form of a juvenile department of regional courts or as a completely separate judicial entity. Furthermore, the as a warrant of child-sensitive manner of the executions of punishments and measures, the Committee recommends to apply the obligation of specialisation to all institutions that participate in offender supervision, residential care, education, treatment, etc.

The Council of Europe's Rec(2008)11 details these requirements concerning the staff responsible for the implementation of community sanctions and measures and the deprivation of liberty of juveniles (Rule 127.1). According to the Recommendation the rules on recruitment, selection, training and status of staff, as well as management responsibilities, conditions of work and ethical standards have to be laid down in a formal document (Rule 127). Based on the detailed requirements of these aspects of staff quality attention is paid not only to the education and training as selection criteria of the employment but also to keeping staff updated through in-service training, supervision and performance reviews (Rule 129). The trainings that fall within the latter category shall focus on:

> "a. ethics and basic values of the profession concerned;
>
> b. national safeguards and international instruments on children's rights and protection of juveniles against unacceptable treatment;
>
> c. juvenile and family law, psychology of development, social and educational work with juveniles;

d. instruction of staff on how to guide and motivate the juveniles, to gain their respect, and to provide juveniles with a positive role model and perspective;
e. the establishment and maintenance of a professional relationship with the juveniles and their families;
f. proven methods of intervention and good practices;
g. methods of dealing with the diversity of the juveniles concerned; and
h. ways of co-operating in multidisciplinary teams as well as with other institutions involved in the treatment of individual juveniles" (Rule 129.3).

In addition to the question of quality, Rec(2008)11 highlights the need for sufficient number of professional as well to enhance effectiveness (Rule 130). As for disobeying this Rule the Recommendation declares "budgetary constraints shall never lead to the secondment of persons who lack the necessary qualifications" (134.2).

In the *Netherlands* police officers are not obliged to established specialised units, or be trained specifically on the needs and appropriate treatment of youth offenders. This may be seen as a problematic issue in the Dutch system, where the two third of all juvenile cases are diverted by the police. The NGO Coalition for Children's Rights expressed its concerns in its shadow report to the last periodic report of the Netherlands to the Committee on the Rights about the lack of specialised expertise or training at the police and prosecution levels (NGO Coalition for Children's Rights, 2014, p. 64). According to the RSJ (2011), the expertise on development of children, legal opportunities and the available intervention-methods has to be enhanced within the police forces on obligatory basis. Furthermore, skills of police officers to interview and treat children should be developed and separate teams should be formed within the police offices. Prosecutors in the Netherlands have to follow training programmes as part of their career trajectory, and within this they have to accomplish a number of courses before they become 'juvenile prosecutors' (RSJ, 2011). Unfortunately, this specialisation does not necessarily mean that only juvenile prosecutors deal with juvenile cases in the justice system. On judicial level a number of district courts have a separate unit for family and juvenile cases. Most of the juvenile cases are handled by a single judge, but full-bench divisions with three judges may also be assigned to deal with more complex cases (European Justice, 2016). As according to the recommendations of the RSJ this practice shall be strengthened through designing special education modules for juvenile judges, and implementing of the combi-trial in the whole country.

In *Belgium* the law does not demand the establishment of specialized police units, although in large police stations there are youth sections established. In practice the "specialised head inspector", who must have a degree in humanities (e.g. in criminology), supports almost exclusively the youth office of the public prosecutor, and may participate in the execution of judicial measures (Van Dijk, Dumortier & Eliaerts, 2008). Furthermore, there is attention on child-friendly interrogation rooms, which are used to interrogate both child offenders and child victims. The prosecutor's office has specialised units as well, and the Youth Courts serve as the ultimate forum of youth cases. Since 2006 not only protection cases, but also the cases of juveniles "transferred" to under adult jurisdiction are tried in the extended Youth Court (Christiaens & Nuytiens, 2009).

In Belgium there exists a special course on youth law that is followed by 140 people yearly. There are also additional, non-compulsory courses available for judges on children's

rights, psychology of the child or child friendly justice. According to the last report of the NCRC these courses were followed by 426 practitioners including judges and other officials belonging to the court between 2002-2015, that implies less than 40 participants per year. Future judges are obliged to follow a two-days long module about the methodology of hearing a child (D'hondt & Péters, 2016, p. 183).

In *England* there is no specialisation to youth cases at the justice level, and special education or knowledge is not required form police officers. However, there is a range of materials, such as codes, toolkits or practices which refer to special treatment-requirements of children (Altan, 2013). At the Crown Prosecution Service all prosecutors should be able to attend juvenile cases at the Magistrate's Court. In order to ensure that prosecutors have the necessary knowledge on the appropriate treatment of children, an obligatory e-learning course have been established, that is required to be accomplished before prosecuting youth cases (Altan, 2013). The specialised Youth Court construction in England exists already for more than a hundred years. Youth Courts, which deal with most of the juveniles, are specialised bodies on the Magistrate's Court level. Experienced judges may deal with cases involving juveniles at the Youth Court.[40] When children are tried in front of the Crown Court, attention must be paid to make the procedure "less intimidating, humiliating and distressing for young defendants and so improve their ability to understand the proceedings and also to participate more actively" (Dignan, 2010, p. 383). There are further no special requirements for the Crown Court, as being primarily adult court, to meet children's needs by special education or training of judges. Dignan notes (2010, p. 383), that Lord Justice Auld recommended in 2001 that, in contrary to the current practice, children who are defendants of 'grave crimes' should be tried in front of a specially constituted Youth Court, comprising one judge and the minimum of two youth panel magistrates. However, this solution would result in a lop-sided construction, where children would be deprived the right to be tried by the judge and jury while they would still be charged similarly to adults.

In addition to the specialisation of justice authorities, the YOT's are also required to receive appropriate training. Youth offender panels (YOPs) are three-person panels, where one member is provided by the YOT, while two are lay members (volunteers) (Dignan, 2010, p. 366). The role of the panel is to discuss the crime with the first-time offender and create a "contract" on how the behaviour of the juvenile aiming to prevent further offending.

In *Scotland* the family protection units of the police are dealing with youth offenders, and refer to the case to the SCRA. The Reporter, who is responsible for the investigation and the decision about referring to the case to the Children's Hearing system are of social work or legal background. The Children's Hearing is a public body (although not court) specialised to apply relevant legal response or decide about the lack of need to this to child offending. The panel members at the hearing are lay volunteers, however all the other participants of the proceeding are professionals dealing with the child or children in general. The case may be referred to the adult procedure with regard to the severe nature of the case or the age of the child. The role of the prosecutor is fulfilled by the Procurator Fiscal, who decides whether charging the juvenile in the Children's Hearing should be necessary, and the Lord Advocate,

[40] Source: Courts and Tribunals Judiciary: Magistrates. Retrieved from https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/ (25/09/2016)

who is entitled to undertake the prosecution in front of the court. There is no special training required at adult courts, although pilot programmes in the past years aimed to establish such specialised units within the judicial system (Burman et al., 2010, pp. 1172-1174).

In *Finland* there is no special youth police, but in some areas there is special attention paid to youth offenders (Lappi-Seppälä, 2010, p. 447). Just like on the level of police, there are no specialised units of the prosecutors' office and the court. The only requirement that judges must fulfil is legal training. In simple proceedings judges sit alone, while normally one judge sits together with three lay judges. In complex cases two judges and four lay people make the decision (Lappi-Seppälä, 2010, p. 451).

As mentioned in Chapter IV, the *Hungarian* juvenile justice system has experienced a significant shift towards a higher level of control of juvenile delinquents and children at risk of delinquency. Although these changes resulted in the growing importance of police forces in prevention and control of juvenile criminality, the establishment of new duties did not create new opportunities in specialisation and training. On local level it is a common problem that the police offices lack trained officers who are able to handle juvenile offenders, and even if they have appropriately trained staff members, they do not have the capacity to cover the juvenile population (Rosta, 2014, p. 227 and 234). There is no legal obligation to establish specialised police units, although on regional level special units had been established for "crime prevention" to deal with both juvenile offenders and child victims. In some regional police offices there is a possibility to hear children in "child-friendly rooms", although the child-fitted furniture and cameras do not guarantee the child-friendly nature of the whole procedure. Critics draw the attention to the need of special knowledge on psychological harms and needs of victimised or delinquent children, as well as training on the appropriate communication (Rosta 2014, pp. 222-238). Rosta (2014, p. 233) notes, that some of the desired improvements in this regard, such as using the available rooms in a broader scale of cases, would not even require financial investments.

The Office of the Public Prosecutor has a special department for child- and juvenile criminality, but under this level there are no specialised departments. The "juvenile prosecutor" is prosecutor appointed by the superior prosecutor. Although there is no legal obligation to establish independent units, in some offices there is capacity to establish a department. While there is lack of obligatory training trajectory, prosecutors become trained in juvenile justice when "growing into" this position through the years spent dealing primarily with juvenile cases (Rosta, 2014, pp. 239-240). Act CLXXXIII of 2010 has abolished the exclusive jurisdiction of the regional courts in juvenile cases. The abolishment of these specialised units led to the transfer of the majority of juvenile cases to the local courts, which have never met juvenile offenders before, and did not receive special training on how to deal with juvenile offenders. The amendment came into force basically from one day to another, thus even if it would have been offered, judges of the local courts could get appropriate education. In addition to this, lowering MACR only complicated the situation, because there is hardly any judge in the country who has experience or knowledge about the new age group. The Committee on the Rights of the Child (CRC/C/HUN/CO/3-4, point 57 (a) and (f)) highlighted the issue of the lack of expertise in the first place in its concluding observations and apart from recommending the (re)establishment of juvenile courts together with judges

who undergone a special training, urged Hungary to increase the number of psychologists available for children in conflict with the law[41].

In Table 27 I summarised the practice regarding specialisation of legal professionals in the countries analysed in this Chapter.

Table 27. Specialisation of legal professionals

	Police	**Court**	**Prosecutor**	**Attorney**
Belgium	**Yes,** there are specialised units in large districts and police stations	**Yes,** Jeugdrechtbank/ Tribunal a la jeunesse	**Yes**, there is a specialised unit that deals with children (*jeugdparket*)	No
England	**No** special units, although some officers are specially trained to deal with children	**Yes,** Youth Court	**No,** there is no specialised unit	No
Finland	**No** special units, although some officers are specially trained to deal with children	**No** special court	**No**, there is no special unit	No
Hungary	**No**, there are no special units	**No** special court	**No**, there is no special unit	No
The Netherlands	**Yes**, there are special units	**Yes**, the Kinderrechter (juvenile court judges)	**Yes**, there are "juvenile prosecutors"	No
Scotland	**Yes**, family protection units fulfil this task	**Yes** Children's Hearings (and pilot Youth Courts for persistent offenders)	**No** (there prosecution is initiated and fulfilled by different authorities)	No

Source: European Commission (2014), pp. 8-16; Burman et al., 2010;

[41] The Hungarian legal education is not divided to bachelor and master programmes, and as a result of this specialization during the 5 years is difficult. In some universities it is possible to e.g. collect 'free elective' credits in specific areas of law, but this does not provide the opportunity to become a specialist of a certain area of law, only indicates the area of interest of the student. The Law Faculty of the Pázmány Péter Catholic University is the only institution in the higher education that offers postgraduate education in juvenile justice so far. Lawyers, Bacherlors of psychology, sociology, social policy and other related fields may apply to a master studies in criminology at the Eötvös Loránd University, which is the also the only institution in the country that offers this opportunity yet. Further initiatives aim to establish criminology as a bachelor programme and to implement criminology to the master education of other universities as well.

CHAPTER VI

THE THREE FACES OF JUVENILE JUSTICE SYSTEMS IN CENTRAL EUROPE

As it was mentioned in Chapter I, it is a common assumption in comparative studies that countries of the same geographical area belong to the same cluster in the field of justice reaction. Countries examined in the present Chapter are often referred to as Eastern-European or Post-Socialist countries when talking about juvenile justice, what makes the impression that being "Eastern-European" means such a strong cultural community which determines even the legislation on juvenile justice, and "Post-Socialist" refers to something more than a partial community in political orientation in the past. In light of the fact that 25 years elapsed since the political transition and these years put out a dozen of successful and less successful legislative ideas and legal amendments in justice institutions, it is worth to take a look at the subject-matter of what we call "Post-Socialist" in juvenile justice. This chapter extends to the examination of three countries: the Czech Republic, Slovenia and Hungary, based on their common historical roots and similar political-historical position before and after WWII.[42]

The author chose these countries for examination in order to challenge the assumption that similar social problems led to similar legislative solutions in these countries following from the common traditions and the legislative basis inherited from the law-making in the 1970s. The research is based on the scientific literature published by local researchers and short visits in the Czech Republic (2014) and Slovenia (2013), which allowed deeper insight into how theory works in the practice of other countries in this area.

VI.1. The history of juvenile justice in the Czech Republic, Hungary and Slovenia

The common history of the three countries dates back to the times of the Dual Monarchy of the Austrian-Hungarian Empire which gathered multiple currently existing Central European countries under the regulatory power of the Emperor of Austria and King of Hungary. However the Austrian and Hungarian authorities were strictly separated in legal terms (the territory of the Czech Kingdom and Slovenia belonged to the Austrian Empire), the dominant role of the German-Austrian legal theory and legislation was unquestionable. This shows in the fact that the most influential scholar of criminology by this time was Franz von Liszt, who studied law in Vienna from Jehring. Based on his *idea of purpose* in criminal law, Von Liszt elaborated the theoretical basis of juvenile justice in 1882 in Marburg (*Marburg Programme,* see Gönczöl, 1980, pp. 38-70; Korinek, 2006, p. 64). He tried to demolish strict theoretical borderlines between the classical and positivist theories and divided criminal offenders into three groups: (1) "occasional offenders" (2) "corrigible offenders", and (3) "non-corrigible offenders" (Nagy, 2013, pp. 105-107). While the first group is the least

[42] For the purpose of comparison this chapter will repeat information from Chapter IV and Chapter V about Hungarian system of juvenile justice.

dangerous, and thus a purely retributive sentence may be successfully deterrent for them, in case of the third group the protection of the society becomes the most important goal with regard to the hopelessly reprobate nature of the person, according to the theory. The second group covers those offenders in juvenile terms, who are vulnerable by nature and spoiled by disadvantageous environmental circumstances, but who have the potential of turning to the good way (Korinek, 2006, p. 64). This theory served as theoretical justification for the establishment of juvenile courts, which employed judges with specialized knowledge or experience on child delinquents, and for building reformatory institutions for child delinquents at the end of the 19th century.

Both the Kingdom of Hungary and the Austrian Empire had their own legislative powers to adopt "national" criminal codes coming in force in the governed territories. The Austrian Criminal Code of 1852 was in force both in the Czech and the Slovenian territories (Karabec et al., 2002; Šugman et al., 2004), while the Kingdom of Hungary had its own Criminal Code, the so-called Csemegi Code of 1878. The criminal legislation on juveniles had been expansively amended at the beginning of the 20th century in the whole Monarchy, when the Austrian Ministry of Justice legislated the requirement of specialized juvenile judges, and special rules on juvenile justice had been implemented into the Csemegi Code in 1908 (Csemáné V. & Lévay, 2002; Filipčič, 2008). The new legislation put deviance and criminal children into a completely new perspective in the eye of the law: the requirement of specialized knowledge and co-operation with child protective bodies forced the judges to give up their purely legal assessment and consider juvenile delinquents as vulnerable subjects, who are victims of disadvantageous social circumstances. Nevertheless, the development of the new legal practice could not last long: shortly after the enactment of the procedural act for the separate juvenile judiciary in Hungary in 1913, the First World War broke out and demolished the institutional developments of the 19th century (Csemáné V. & Lévay, 2002).

Although the First World War meant a historical turning point for the nation states which had been formed on the territory of the former empire, the old legislation of the imperial times stayed in force. The General Part of the Hungarian Csemegi Code, although with multiple amendments, remained in force until 1951, while the Special Part was replaced by the first Socialist Criminal Code in 1962 (Ligeti, 2006). In the Slovene territory of the newly formed Kingdom of Serbs, Croats and Slovenes the Austrian penal law was supplemented by the military rules of the Serbian Criminal Code until 1929, when the new Criminal Code of the Kingdom of Yugoslavia was enacted (Šugman et al, 2004). Similar adaptation of the imperial laws had happened in Czechoslovakia, where both the Austrian (Czech territory) and Hungarian (Slovak territory) criminal law stayed in force, and where this doubled nature of legislation caused serious problems until the new legislation in 1950 (Karabec et al., 2002). Despite the transitional nature of criminal legislation, in terms of juvenile justice this period is important because of the birth of the first separate Juvenile Criminal Judiciary Act in the Czech Republic in 1931 (Vávra, 2012; Karabec et al., 2002). The Act set the MACR at 14 years, but only under the condition of the mental ability to realize the "harmful character of their act" (Vávra, 2012, p. 37), and established the panel of juvenile judges, which consisted of specially trained judges and lay persons (Karabec et al., 2002).

The legal influence on the three countries turned to the same direction again after the Second World War. The Czechoslovak Socialist Republic and People's Republic of Hungary joined to the Socialist Block, while Slovenia remained the part of Yugoslavia, which was also governed by socialist political regime led by Josip Broz Tito. In the case of Hungary and Czechoslovakia the impact of the Soviet ideology and legislation overtook the rest of the imperial traditions. The states declared the socialist human ideal, according to which criminality was only the sign of the still discoverable remains of the capitalist spirit and it could not exist in the communist society (Szabó, 1961, Vigh, 1964). The old laws dating back to the imperial times did not serve the goal of establishing the communist social order well enough, and therefore a drafting procedure began right after the adoption of the new, socialist Constitutions (first in Czechoslovakia (1948) then in Hungary (1949)). The first Socialist Penal Laws were adopted in 1950 in Czechoslovakia, and in 1951 in Hungary, although the latter was only a statutory rule on juvenile justice (Ligeti, 2006). The age of criminal responsibility was set at 15 in Czechoslovakia (Karabec et al., 2002), while in Hungary it was set at 12 with the restriction regarding the sanctions: only measures could be imposed for delinquents between the age 12-14 (Ligeti, 2006). The liberalization of Soviet law after the death of Stalin in 1953 led to the reformation of fundamental principles, and a new wave of criminal legislation started to evolve around the Soviet countries from the late 1950s. As a part of these reforms MACR of 14 was set in the Soviet Union in case of more serious offences (e.g. homicide, robbery, malicious hooliganism, etc.) and to 16 where a minor offence was committed (Cipriani, 2009, p. 85). As a reflection to the changes in the Soviet Union both Hungary and Czechoslovakia adopted a new Criminal Code in 1961. With this legislation the Hungarian Parliament raised the minimum age of criminal responsibility to 14, which remained untouched until July 2013 when the New Criminal Code came into force.

The war and the establishment of the socialist state urged legislative changes in Yugoslavia as well. Soon after the war various statutes were enacted, and remained in force until the enactment of the new General Part of the Criminal Code in 1947, and its completion with the Special Part in 1951 (Šugman et al, 2004). Although this legislation was also drafted in a socialist manner, the confrontation of Tito with Stalin shifted the ideological and legal developments towards a Yugoslavian "exceptionalism". The law of 1951 divided juveniles into two age groups: younger (between 14 and 16 years) and older (between 17-18) juveniles, and allowed the judges to choose between educational measures and sanctions based on their own judgment on the liability and the delinquent's personal circumstances (Filipčič, 2008). The amendment of 1959 excluded the possibility of imprisonment of younger juveniles, and only allowed such sentence in case of older juveniles, "if the State had proved that the imposition of an educational measure would be inappropriate" (Filipčič, 2008, p. 398). When the first Slovenian Criminal Code was enacted in 1977 based on Constitutional mandate of the Federal State, the rules on juvenile justice established by the amendment of 1959 remained untouched until 1995 (Šugman et al., 2004; Filipčič, 2008).

After the peaceful political transition in Hungary, the Velvet Revolution in the Czech Republic and the declaration of independence in Slovenia at the turn of the 1980's to 1990's, the "new freedom" from the socialist totalitarian systems opened the doors to the emergence of social and constitutional regulations corresponding to human rights' requirements and particularly the Convention on the Rights of the Child (UNCRC). The present Chapter

provides a comparative analysis about the state of juvenile criminality and juvenile justice in the above countries to show how they used their freedom to shape their juvenile justice systems.

VI.2. Analysis of the current justice systems of the Czech Republic, Hungary and Slovenia

As presented above, the historical development of juvenile justice systems in the three countries connect at certain periods of their histories. Regarding to the nature of the legislative procedures at these periods, similar patterns of forced, rather than organic nature may be observed in criminal and administrative laws. However, probably due to the lack of political interest in introducing specific features in juvenile justice, the national law-makers had certain freedom in determining age limits and legal measures. After the political transition the focus of legislation turned from serving political purpose to serve the people's welfare, public order and financial rationality of the newly formed capitalist states. In this regard some similarities may be observed in the development of juvenile justice. Firstly, it is important to know that the legal construction of all countries in this examination belongs to the civil law systems, with strong influence of German legal heritage. Secondly, it is also true that to a certain extent they preserved most of those legislative patterns in their legal systems which were developed in the Socialist era. None of them organized an alternative (like in Scotland) or a separate (like in Germany) judicial system for juveniles, but maintained a justice-based system where juvenile courts are accommodated into certain jurisdictional levels of the general judicial system. The exceptional (rather of separate) construction of courts is also expressed in the law-making technique: in Hungary and Slovenia special rules on juvenile substantial and procedural law are codified in the Criminal Code and the Act on Criminal Procedure, while in the Czech Republic the Act on Juvenile Liability for Illegal Acts and on the Judiciary in Juvenile Matters collects those substantial and procedural rules which are exceptional compared to the general substantial and procedural provisions provided in relevant acts. The Special Part of the Penal Code remains in force as a whole in all three countries for juveniles as well. This means that age is only recognized as a circumstance that alters the type or gravity of tsanctions but children can theoretically commit any criminal act. As a result of the above characteristics juvenile justice is to be understood as a "small justice system", rather than any kind of special framework for delinquent children.

The following systematic analysis will be limited to the key questions of Eastern European juvenile justice which are in the “hot spot” of the children’s rights perspective. They will be examined in light of the relevant international requirements as given by the Convention on the Rights of the Child (UNCRC), the General Comments of the Committee on Rights of the Child (General Comment) as well as further European sources such as the Recommendations of the Council of Europe. Country reports and concluding observations of the Committee on the Rights of the Child are assessing improvements and further tasks of the countries and thus provide with an important source of the implementation of children's rights. The state of implementation by the Czech Republic was evaluated by the Committee in 2011, while Slovenia was examined in 2013 and Hungary one year later, in 2014. This gives a considerably up-to-date basis for the analysis.

VI.2.1. Minimum age of criminal responsibility

All countries in this examination established a MACR complying with the international requirement of setting an age limit, below which children cannot be held responsible for criminal offences (Art. 40(3) a) of the UNCRC). The Czech Criminal Code sets the age threshold of criminal responsibility at 15 years (Section 25 of the Czech PC), which rates the Czech Republic as a rather lenient state among the European countries regarding criminal liability of children (Killias et al., 2012). However this comparably high MACR in the Czech Republic was debated and even lowered by the Parliament to 14 years in 2009, the new PC adopted in the same year restored the original rules (Válková & Hulmáková, 2010, p. 253). This regulation is in line with the recommendation of the Committee on the Rights of the Child (General Comment No. 10, point 16), according to which MACR should be established at 14-15 years in order to serve the best interest of children, "bearing in mind the facts of emotional, mental and intellectualmaturity" (Beijing Rules, Rule 4). Also compliant with the international rules the Slovenian regulation, which sets the MACR at 14 (Section 21 of the Slovenian CC) based on the Yugoslavian heritage, although lowering the age limit has been a topic of political debate in the last decades. The reason of the unwillingness for change is probably the relatively welfare-based build-up of the current system in which criminal responsibility is complemented by the rules on sanctioning where the age limit on deprivation of liberty excludes imprisonment of delinquent youth under 16 (see under VI.2.5. of this Chapter).

The situation is more problematic in Hungary, where the Parliament adopted the new Hungarian Penal Code in May 2012, while simultaneously opting to lower the MACR from 14 to 12 in case of committing serious, violent crimes, namely homicide (Section 160(1)-(2) of the Penal Code), voluntary manslaughter (Section 161), grave assault (Section 164(8)), robbery (Section 365(1)-(4)), plundering (Section 366(2)-(3)) and act of terrorisom (Section 314(1)-(2)). The paragraph on the MACR provides a variant of the *doli incapax* presumption, according to which measures by criminal court may only be imposed against a child younger than 14 years if he was able to see the consequences of his act. If it is proven that the child was able to foresee the consequences of his acts the court may apply preventive measures in his case, among which at most four years of deprivation of liberty in a reformatory institution. This legislative act was not substantiated either by the number and characteristics of crimes committed by children between 12 and 14 (UNCRC Alternative Report, 2012), or by any child protective, judicial, or executive institutional reform. The unexpected changes resulted in improved co-operation between the institutions of justice and child welfare, and caused disagreement at multiple authorities and non-governmental organizations. Despite the objections, the section came into force on 1 July 2013. The new regulation lowered MACR to the very bottom of internationally acceptable limits and constructs a double-standard presumption on maturity with regard to the act of the child, which is the perfect opposite of what is recommended by the international organizations (General Comment Nr. 10, point 16., 2007). Apart from the legal concerns, it is also important to see that while this sole new rule raised many practical and legal questions, most of them remained unsolved. The actors of the system still do not receive specialised education or training on how a judge should

communicate and deal with a child of 12, which preliminary measures may be appropriate or harmful for a child of this age, or how the institutions should provide safe and supportive environment, especially in case of deprivation of liberty. In September 2014 the Committee on the Rights of the Child expressed its concerns about the clearly punitive legislative step, and urged Hungary to "take measures to increase the age of criminal responsibility from 12 years back to 14 years even for the most serious crimes" (CRC/C/HUN/CO/3-5, point 57 (b)).

VI.2.2. Institutions responsible for dealing with juvenile offenders

In all three countries child protection or social welfare services are responsible for those children who are involved into delinquent acts before reaching MACR. In Hungary it means that the police shall report to the local Bureau of Child Protection about the delinquent act of the child. The Bureau of Child Protection is entitled to take further steps under child protection laws if the social workers confirm that the child is at risk of any form of abuse or committing further delinquent acts. Within its authority the Bureau of Child Protection is entitled to take various steps in order to eliminate the risk, such as imposing supervisory measures, supporting the family by advising on voluntary treatment, ordering intensive social work or as a measure of last resort placing the child in open or even closed institutions. The supporting system for child delinquents is similar in Slovenia, where Social Welfare Bureaus are responsible for taking further steps in cases where the delinquent has not reached MACR yet. Delinquency is perceived as the sign of need for social support. The Czech Republic developed a somewhat more justice-oriented system of judicial supervision for those children who have not reached the legally critical age yet, but who technically committed a crime. The cases of children under MACR are called "otherwise criminal acts" (Vavrá, 2012), which shall be tried by local civil courts. In practice it means that when the police have closed the investigation on the criminal case, the files are sent to the public prosecutor with reference to the lack of criminal liability of the delinquent child. If the public prosecutor finds it reasonable based on the evidence, he may refer the case to the civil court, proposing the imposition of a protective measure for the child. The following protective measures may be imposed in this case: (1) supervision by a probation officer, (2) psychological treatment/therapy, (3) placement in a closed institution specifically for delinquent children between 12 and 15 (4) educational obligations or restrictions, (5) warning and (6) protective treatment (Válková & Hulmáková, 2010, p. 265).[43] While judicial control over deprivation of liberty is, in general, a reasonable legislative requirement, this process which begins with regard to the criminal act and results in a measure supervised by justice institutions queries the significance of the relatively high MACR in the Czech system. Although the law suggests that the available measures applied by a civil court aim to provide with protection and therapy, it instead seems to be a procedural way of lowering MACR and avoiding procedural guarantees of the criminal law in case of younger children. The Committee on the Rights of the Child already expressed its concerns about the possibility of placing children under 15, even for petty offences, in institutional care prior to legal proceedings, without theguarantees associated with standard criminal proceedings", and urged the Czech Republic to ensure at

[43] The list of measures mentiond in the literature has been updated by Jana Hulmáková in 2017.

least the same level of procedural guarantees for these children like for delinquents above 15 (Concluding observations, 2011, points 69 b) and 70 b)).

VI.2.3. Minor delinquency and diversion

The understanding on minor criminality in Post-Socialist countries stems from the Soviet law, which distinguished between criminal offences and non-criminal *administrative offences* based on their "harmfulness on the society" (Dünkel et al., 2010, p. 1655, Šugman et al, 2004, p. 11, Filipčič, 2004). This distinction still exists in many Post-Socialist legal systems, such as in Hungary and Slovenia. While criminal offences are tried and sanctioned by courts, administrative offences are decriminalized and settled in a simpler procedure in which judicial control is only necessary in cases where (short term) deprivation of liberty is proposed as sanction. The category of 'administrative offence' covers minor crimes, which are only considered non-harmful with regard to the low value of their subject (e.g. shoplifting or fare-dodging), and other deviances, which do not have equivalents in the Penal Code (e.g. begging or speeding). This category decriminalizes minor crimes by denying their criminal nature and therefore handles them together with other illegal acts. Similarly to other European countries there is a lot of uncertainty about the definition of these offences, and even more debate about their appropriate sanctioning (see Chapter V). Acts which may be called petty offences in international context, as for instance theft for a slightly higher value (e.g. theft of a bicycle) are tried and sanctioned according to the Act on Penal Procedure and the Penal Code, are often sanctioned with fine or *diversion* with restorative elements. The prosecutor or the judge may apply conditional or unconditional diversion, since police traditionally do not have discretionary right to apply alternative sanctions. Dünkel and his colleagues (2010, p. 1655) point out that the tradition of decriminalization of minor crimes in Eastern Europe has been reformed in multiple countries during the past decade. This happened for instance in the Czech Republic, where the distinction was abolished and replaced by procedural diversion in the new Penal Code that came into force in 2010. This new law may lead to controversial practices in diversion as compared to general decriminalisation.

Separating criminally punishable and not punishable deviances in order to exclude the opportunity of imposing disproportionate measures and to avoid the burden of criminal procedure when it is not necessary may correspond with the procedural recommendations of the Committee on the Rights of the Child. According to the recommendations on juvenile justice the States Parties "shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable" in order to avoid early stigmatization and participation in a criminal procedure (General Comment No. 10, 2007, point 11). Since the majority of the criminal offences committed by children fall into the category of minor criminality (however its definition may be different in every country), there is a need for alternatives of judicial settlements. In light of the above description the concept of procedural decriminalization perfectly fulfils the requirements. However, in reality several problems emerge from this concept. The registration of administrative offences, as it does not belong to criminal statistics and several state authorities and municipalities may be responsible for collecting them separately, is usually defective or poor. The fragmentation makes centralized

data collection more difficult than in case of the uniform police register. As a result of these issues in data collection it is hard to measure the extent and evaluate the consequences and effects of those measures which are assigned to deal with minor offences. What is certainly true is that fine is imposed the most frequently in administrative cases. Fine shall be paid either by the child or more likely the parents on behalf of him or her. In Hungary it is also possible to apply short term community work if it seems reasonable. In addition to these measures, the Hungarian regulation has been shaped by the Parliament towards increasing severity. In the summer of 2010 the prohibition of applying confinement against juveniles was deleted by the amendment of the Act on Administrative Offences, which resulted in allowing *short sharp shock* against children (Lévay, 2012). Based on the amended regulation, a judicial clerk or a judge may order at most 30 (single offence) or 45 (multiple offences) days of confinement for children caught in act for committing minor thefts or even prostitution.[44] According to the data of the Ministry of Home Affairs (2014), between 15 April 2012 and 31 December 2013 children were found to be in violation of the Act on Administrative Offences 35,331 times.[45] Juveniles violated the rules of traffic most often (in 16,766 cases), followed by the 8,131 offences against property (mostly shoplifting) and 2,714 acts against public cleanliness, almost all of the confinements (360 out of 390 confinements applied) had been disposed in offences against property (280) or prostitution in a prohibited area (80). Data on the additional actions taken by the judge or clerk to arrange child protective support for these children is not available. With regard to the high number of cases and the relatively severe judicial responses indicate the need for further research on this phenomenon. Probably the vast majority of these cases call for non-intervention as response or protective rather than punitive measures, taking the child's personal circumstances into consideration. Therefore it is hard to imagine how the judges and clerks proceeding these cases justify imposing short sharp shock. The regulation brought on harsh objection by agents of human rights and the civil society in Hungary, who based their counter-arguments on the requirements of UNCRC. Justifying these objections the Committee on the Rights of the Child (2014) expressed its concerns about the Hungarian regulation which is, according to their opinion, in violation of the international requirements. Therefore they urged the government to prohibit confinement in juvenile cases, and eradicate it in particular in those cases where confinement may follow from omission of payment of fines. Nevertheless, this approach is exceptional in the Central-European region, as none of the other countries examined here apply similar severity.

Legally recognized minor criminality is dealt with through diversion in the criminal justice system. As mentioned above, diversionary measures may only be imposed by the prosecutor. This is possible in all three countries with similar conditions, even though the actual list of instruments is different. Diversion may be conditional or unconditional. In Slovenia and the Czech Republic it is possible to dismiss the case in the early stage if re-offending seems to be unlikely without further resort with regard to the actual case and all the

[44] Prostitution itself is not an offence unless it is committed a public area where it is restricted (Sections 172 of the Act on Administrative Offences).

[45] Statistical data on the previous years is not available, because the law have not provide with obligatory and centralized data collection on administrative offences before the Act on on Administrative Offences of 2012.

circumstances of the child (principle of expediency[46]) (Válková & Hulmáková, 2010, p. 267; Filipčič, 2009, p. 220). However, this opportunity only applies if the crime committed by the child is punishable with at most three years of imprisonment. The prosecutors are entitled in the Czech Republic, Hungary and also in Slovenia to suspend the prosecution without a condition for a certain period of time, which results in dismissal if the juvenile does not commit any further offence. It is also possible to suspend the case until the fulfilment of a specific condition. Conditional and unconditional suspension of the case is only possible if the crime is punishable with at most 5 years of imprisonment in Hungary and in Slovenia (Filipčič, 2010; Hungarian PC, Section 107), while in the Czech Republic it is generally applicable to all minor crimes, if specific conditions have been fulfilled (e.g. confession, compensation of damage).[47] In Hungary the minor case (punishable with at most three years of imprisonment) may be suspended to two years in general, if this is believed to influence the behaviour of the suspect positively in the future. In general, the prosecutor may not impose special measures against the juvenile, only accept his or her voluntary active regret. The only exceptions are the conditions determined in the closing agreement of the victim-offender mediation and the special procedure applied in minor drug offences. The most important case where procedural diversion is applicable is drug using. In case of first-time drug users the prosecutor may suspend referral to the court for one year, while the offender has to participate in a treatment programme for at least half a year during this period (Csemáné Váradi, 2010, p. 681, Drogriporter, 2011). In Slovenia diversion by the prosecutor was implemented to the criminal procedural law at the beginning of the 1990's (Filipčič & Prelic, 2011). According to the law in force juveniles may show voluntary active regret or offer compensation for the damages in order to avoid the judicial procedure. In addition to retrieval it is also possible to apply community service as a condition of the suspended prosecution (Filipčič, 2010 p. 1276). It shall not exceed 60 hours within a three-month period (in at most six months), and it is usually applied for minor offences against property. It is interesting to note that its execution is usually unsuccessful, not because of the juveniles' behaviour, but because of the financial and technical difficulties of the Centres of Social Work which are supposed to supervise the accomplishment (Filipčič, 2009). As a method of conditional diversion, victim-offender mediation counts as an important procedural alternative provided by the law in all three countries, although it is not particularly popular in practice yet (Dünkel et al., 2010, p. 166).

VI.2.4. Jurisdiction of juvenile offenders

While in Western Europe various models of separate and specialised bodies were established in juvenile justice (see for example the juvenile courts in Germany and Austria, or the Children's Hearing in Scotland), Post-Socialist countries, as mentioned above, embedded their juvenile systems into the adult system as an exceptional procedure. This systematic build-up implies that, although specialisation to youth and family law is possible to a certain extent (see UNCRC Concluding Observations, 2011), juvenile judges are usually not dealing

[46] This opportunity is only applicable in case of those juveniles who committed a criminal offence punishable by up to three years imprisonment or by a fine, according to the Art. 466 Paragraph 1 of the Slovenian CPA.

[47] Information is provided by Jana Jana Hulmáková in 2017.

with juvenile cases exclusively. Neither the case-load, nor the daily distribution of cases would allow exclusive specialization to juvenile cases. Despite the fact that judges are not specialised to juvenile cases, a variety of strategies have been developed to create children's rights based juvenile justice in every jurisdiction. Through warranting due process and proportionate duration of the procedure, involving lay professionals or creating mandatory list of circumstances that shall be taken into consideration when deciding about the appropriate measure or sentence. The most important guarantees are set out in the Guidelines of the Committee of Ministers of the Council of Europe (2010) on child friendly justice, which gives a universal overview about those requirements to which juvenile justice systems should comply in order to be considered child-friendly. Table 28 compares the implementation of the most important requirements and their state of implementation in the examined countries' juvenile justice systems.

Table 28. Procedural guarantees in the juvenile justice system

	Czech Republic	**Hungary**	**Slovenia**
the juvenile is entitled to have a defence lawyer *ex officio*	yes	yes	yes
specialized juvenile judge	yes	no	yes
lay judges in the first instance	no (only in serious cases)	no (only in serious cases)	yes
obligatory closed hearing	yes	no	yes
compulsory involvement of the social/ child protective services	yes	only if there is no caretaker	yes
compulsory psychological examination	no	only under 14	no
parents have to testify in the case (unless it is impossible)	no	no	yes
compulsory attendance of the juvenile	yes	no	yes
separated trial from adult offenders accused for the same offence	yes	no	yes

Sources: Filipčič, 2010; Válková & Hulmáková 2010; Hungarian CPA, Section 448, 452, 460-462, Sections 480 and 456 of Slovenian CPA

The most important guarantee of a fair and child-friendly trial is ensuring the emergence of procedural guarantees of due process, such as the right to be heard, protection of the private life of the child, compulsory and free legal representation for a child and avoiding unnecessary delay in the case where a child is involved. The Guidelines of the Council of Europe (2010) contain detailed explanation on the content of the broad principles, for instance the privacy of children which shall be protected from third persons and particularly the media (Part II). In order to ensure that children are protected against publicity, judges have to exclude public from juvenile trials, both in Slovenia and the Czech Republic, while in Hungary the judge may consider disposing closed trial in protection of the child's privacy. Complying to the requirements, free legal representation for children is present in all countries examined in the present study. As the Guidelines further state, lawyers who

represent children in any legal procedure have to be knowledgeable on children's rights and related issues (Guidelines, 2010, Rule 39). With regard to the tradition of universal and standardized legal education in Central Europe, special education or training on children's rights is rarely available for either professionals or university students, since attention on children's rights started to emerge only in the past decade. However, it must be noted that the extent of specialization prescribed in the Guidelines is hardly available in any European country, and probably some generations pass until children's rights become as important in the legal profession as is required. Since three or four years in a child's life amount to much bigger changes in personality, appearance and family circumstances than they would do it in an adult's life, procedures only reach their educational goals if they can provide with a nearly immediate reaction on the delinquent act. Rule 50 of the Guidelines (2010) takes this into consideration when it urges states to work out a process where speedy response and respect of the rule of law are both taken into consideration.

Member States are encouraged by the Council of Europe (2010) toconsider the establishment of a system of specialised judges and lawyers for children and further develop courts in which both legal and social measures can be taken in favour of children and their families (Part V. point f.). The state of implementation on the requirement of judges, prosecutors, and lay persons who are aware of children's needs and who have experience in dealing with juvenile cases is constantly in the hot spot of the international discussions. According to the Guidelines (Rule 60) "as far as possible, specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor’s office." As mentioned above, we cannot talk about specialised courts or special procedures for juveniles in Central-Eastern Europe, only exceptional procedures determined by the age of the delinquent. Since countries in Central-Eastern Europe have a fairly paternalistic tradition of judicial operation, the focus has always been on limitations by legal opportunities on determining and serving the best interest of the child instead of the actual needs of children. This primacy of the theoretical legal approach in the legal profession in children’s rights stabilises the paternalistic judicial patterns in the area, and obstructs the organic development of legal professionalism in the field of juvenile justice in the past 20 years. The need for special education and 'age-sensitive' jurisdiction for children has been raised only recently by the Council of Europe and the UN Committee on the Rights of the Child. Whilst the Committee on the Rights of the Childappreciated all the efforts in this regard, they urged Hungary and the Czech Republic to ensure that juvenile judges and other profeccionals working with children in the justice system receive appropriate training (see CRC/C/HUN/CO/3-4 and CRC/C/CZE/CO/3-4). Both countries offer occasional trainings for judges who deal or may deal with juvenile cases, but the systems still struggles with the lack of expertise since special education or training on juvenile cases is not a requirement for judges. The situation in Hungary became particularly problematic in the past years, since the exclusive jurisdiction of regional courts was abolished from the regulation in 2011, and therefore the previously appointed "juvenile judges" lost their special functions. While special education or training was not required from the criminal judges, the relatively high number of delinquent cases under the jurisdiction of the second level of the court and the higher professional standards warranted the opportunity of, at least, informal training and sharing

experiences between judges. In 2011 the Parliament abolished the exclusive jurisdiction of the courts of second instance to support a more effective distribution of cases and reduce their burden. This resulted in a basically immediate replacement of the majority of juvenile cases to the local courts, where, following from the previous rule on exclusive jurisdiction, the criminal judges had never met juvenile delinquents before. In order to be able to get through the changes as fast as possible, special education or experience as a requirement had still not been implemented to the law. This means that any local judge, who tried mainly adult property offences before, is allowed to try juvenile cases, and apply (for instance) the educational preventive measure of deprivation of liberty for 12-13 year old children. The lack of experience shows in practice: the Hungarian Helsinki Committee raised the issue of inappropriate and disproportionate judicial practice in a case where a boy of 17 had spent 13 months in preliminary arrest being accused for robbery where the object was only a T-shirt (Bede, 2014). Lack of specialized knowledge in judiciary is also a problem in Slovenia, where apart from the educational issues the small number of judicial cases also limits the opportunity to gain experience (Filipčič, 2010, p. 1273). While the number of reported youth offending is constantly dropping, only about one third of the reported youth crimes are tried in front of court. The reason of the considerable drop of the number of cases is the expediency principle, according to which, as mentioned above, the prosecutors may dismiss the cases in the earlier stages of the procedure.

With respect to the international requirements the justice personnel is not only expected to have certain expertise, but also to co-operate with other professionals creating multidisciplinary approach to the investigation on the best interest of the child (Guidelines, Rules 16 and 17). In order to ensure the fulfilment of child-friendly requirements judges should be able to "seek advice from other professionals, such as psychologists and social worker" when deciding about the disclosure of evidence, and interact with the child with respect and sensitivity (Guidelines, 2010, Rules 57 and 60). This implies the need for education of judges about the special needs and fears of a child in front of the court. International documents encourage the organization of task-forces from the child-specialists of different professions such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators, who can assess the child's needs from different perspectives. This approach requires interdisciplinary understanding as well, where police officials, psychologists and lawyers have to understand each other’s viewpoints and suggestions regarding the case, and (most frequently) the judge has to come to a conclusion after assessing the information. While this kind of co-operation does not sound unrealistic in theory, the practice suffers from legal and professional contradictions, which sometimes even hinder the effective work rather than support it. The Czech law on juvenile matters implemented a new, restorative approach to the Czech juvenile justice system. The elements of the system aim to maintain the idea that delinquency, in its nature, is only a youthful indiscretion following personal and environmental circumstances. Thus, for example, a criminal offence committed by a juvenile is called a wrongdoing (in Czech: *provinění*) instead of criminal offence (Karabetc et al., 2011). As Válková (2006, p. 385) notes, the new law "defines the principles of legal form that are based on the principle that all measures, procedures, and instruments covered by a new law have to be used for restoration of broken social relations, integration of the young person into the wider social environments and for

delinquency prevention". This approach implies that the system needs to provide specialised judicial staff and prosecution who are able to resolve all of those questions set by the law, which are required to be cleared up before the adjudication of a sentence. In order to avoid a possible harmful decision, the judge is obliged to examine the juvenile's personal and family environment, possible criminal background etc. In practice this means that the judge has to cooperate with different authorities when unfolding the situation of the child, and as such, complies with the requirement of multidisciplinary. Even though legal rules are clear about the goals, practical implementation still does not seem to fulfil its purpose in every case. Večerka and colleagues (2009, p. 121) reported that the obligatory judicial analysis of the personal and social environment happens mainly formally, and it is completely insufficient in the quarter of the cases. According to their analysis, the problem is probably related both to the lack of expertise on the judicial side which would warrant deeper understanding on the professionals' reports, and the professionals' misunderstanding on legally relevant issues, on which they are required to comment.

The European Commission have compared the most important institutions of juvenile justice in the Member States in its *Summary of the contextual overview on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union* (2014). As a conclusion policies of the Member States had also been evaluated, based on the particular list of safeguards indicated by the country reports. Table 2 provides and extract of the list of the evaluation criteria containing only those safeguards where one of the three countries were mentioned as either being fully comprehensive or non-comprehensive.

Table 29. Procedural safeguards based on the European Commission Reports (C= comprehensive; NC= non-comprehensive)

	Czech Republic	**Hungary**	**Slovenia**
Specialist institutions	C		C
Training of professionals	C	NC	
Protection from discrimination		C	C
Legal remedies for violation of rights			C
Information and advice	C		
Protection during contact with the police	C	NC	
Conditions in pre-trial detention	C		C
Right to be heard	C		
Right to privacy			C
Avoiding undue delay		C	
Provision of information and advice		NC	
Right to legal counsel and representation	*NC*		
Guidance and support after criminal judicial proceedings		*NC*	

Minimum age of criminal responsibility		*(NC)*[48]	

A number of guarantees have not been evaluated by the Commission reports, Table 29 shows that while the Czech and the Slovenian justice system are shown as rather compliant with the international regulation, in the Hungarian system there is a number of non-compliant elements. Although this evaluation might be the result of a lack of knowledge and/or false comparative perspective on certain problematic areas of juvenile justice, it shows very well the general approach, according to which the Hungarian juvenile justice system is evaluated by professionals and researchers as a rather negative place to be for juvenile offender.

The Guidelines (2010) suggest, that child-friendly environment should reckon with child-friendly environment in courts (Rules 9, 54, 55, and 56), and shape it towards a less scary manner to children. The countries in this study took considerable steps towards creating child-friendly environment when they established child-friendly interrogation rooms at the police bureaus, where conversations may be recorded and special tools for reconstructing events are also available. All countries have multiple interrogation rooms available for both delinquents and victims, and methodologies to work with children among the special circumstances.

VI.2.5. Sanctioning system and deprivation of liberty

In order to get a realistic picture about the nature of a juvenile justice system, sanctions set in law in light of sanctions applied in practice shall now be studied more closely. International requirements on sentencing are summarised in the General Comment No. 10 on children's rights in juvenile justice by the Committee on the Rights of the Child. As mentioned before, the Committee have recommended a proportionate hierarchy of the sanctions and measures which may be imposed against children with regard to their age, mental and psychological condition and the crime into which they have been involved. Among all measures possibly applicable against juveniles, the most attention in international law and literature is paid to those punishments or sanctions which result in deprivation of liberty. The reason of the attention is the increased harmfulness of institutionalisation throughout childhood. Even though the consequences of institutionalization, especially in closed facilities and strict regimes, are known in international literature (see for instance Van der Laan & Eichelsheim, 2013, Children's Rights Alliance for England, 2013; UN Independent Expert, 2006), countries shall be reminded by the Committee on the Rights of the Child from time to time to reduce the number of juveniles placed in prisons and reformatory institutions and provide with broader variety of alternative sanctions in their sanctioning system. Based on the UNCRC deprivation of liberty of any kind (whether imprisonment or placement of any other closed facility) should be used as a measure of last resort only, and for the shortest appropriate period of time possible (Article 37b)). Instead of using closed institutions, the Committee on the Rights of the Child (General Comment No. 10, 2007)

[48] With regard to the general criteria of non-comprehension ("MACR is 12 or lower") this applies to Hungary as well, although the information was not mentioned yet by the time of the completion of the Hungarian report in 2012.

recommends using measures where children in conflict with the law are dealt with "in a way that promotes reintegration, requires that all actions should support the child becoming a full, constructive member of his/her society." The Committee of Ministers of the Council of Europe repeats UNCRC in Rec(2008)11, when highlighting the requirement of restricting the use of deprivation of liberty which should be imposed "for the shortest period possible" (Rule 10), and should be served among the conditions specified in the document. Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions and measures detail the expectations on juvenile sanctioning details the requirement of introducing a wide range of community sanctions, and preferably using sanctions and measure which have an educational impact (Rules 23.1 and 23.2). The applied sanctions shall maintain the juveniles in the community and only restrict their liberty through obligations and conditions. Based on the recommendations of European and international human rights' bodies, Dünkel and his colleagues provide the following list of alternatives from the least to the most intrusive (without non-intervention): (1) fines, community service, reparation orders, mediation; (2) social training courses and other more intensive educational sanctions; (3) mixed sentences, combination orders; (4) suspended sentences without supervision; (5) probation; (6) suspended sentences with supervision and electronic monitoring; (7) educational residential care, youth imprisonment and similar forms of deprivation of liberty (Dünkel et al., 2010, p. 1671). In the followings, I will detail how deprivation of liberty and its alternatives appear in law and in the sentencing practice of the Czech Republic, Hungary and Slovenia.

The Act on Juvenile Liability for Illegal Acts and on the Judiciary in Juvenile Matters constitutes the basis of restorative policies in the Czech Republic. According to the Act, educational, preventive and punitive measures are allowed to be applied against juveniles.[49] While punitive measure means the actual punishments and preventive measures apply to the cases where treatment or protection of a person is necessary, an educational measure may be imposed for a juvenile in the case of a full or conditional discharge from a punitive measure. This implies that an educational measure may be applied together with or independently from (for at most 3 years) the punitive measure (Karabec et al, 2011). The theoretical hierarchy of sanctions is the following: (1) diversion of criminal proceedings (alternative ways to criminal proceedings, such as mediation or abandonment of public prosecution); (2) educational and protective measures; (3) alternative sanctions to imprisonment; (4) sanction of imprisonment (Válková, 2006, p. 386). As it shows, a repressive reaction is ultima ratio in this system, where penal consequences "may only be applied in socially harmful cases, when it is not sufficient to apply liability according to another legal regulation" (Karabec et al., 2011, p. 24). The primacy of alternative measures implies wide range alternative measures that are frequently imposed. Alternatives are available both on pre-court (prosecutor) and court level. The prosecutor may divert the case with a condition that serves restorative goals (Dünkel,

[49] The actual 'punitive measures' in case of juvenile delinquency are the following according to Art. 24 para 1 of the Juvenile Justice Act: (1) community service, (2) fine punishment, (3) fine punishment with a conditional postponement, (4) forfeiture of a thing or another property value, (5) prohibition to undertake activities, (6) banishment, (7) house arrest, (8) prohibition to attend sports, cultural and other social events, (9) conditional imprisonment suspended for a probationary period (suspended sentence), (10) conditional imprisonment suspended for a probationary period with supervision (11)(unconditional) imprisonment. Source: Karabec et al., 2011, p. 64, CPT, 2014, p. 38.

Horsfield & Păroşanu, 2015, p. 44-45), however, as Dünkel and colleagues (2010) note, diversion is not widely applied, which is mainly the consequence of the lack of facilities to fulfil certain tasks (Dünkel, Horsfield & Păroşanu, 2015, p. 46). Mediation is implemented by the probation office, but it does in practice it is rarely used (Dünkel, Horsfield & Păroşanu, 2015, p. 45)Although dismissal by public prosecution is also possible on the basis on the lack of public interest in the prosecution of the delinquent, the prosecutors and judges are more likely to suspend prosecution with conditions (in 20% of the cases, see Dünkel et al., 2010, p. 1687). The condition may be an accomplishing an educational measure or restorative tasks.

In cases where sentence have been imposed, imprisonment still seems to be the most important despite the ultima ratio rule, however most of these sentences are suspended together with or without additional supervision. This leads to the controversial situation that, while half of the sentences are prison sentences, the daily juvenile prison population in only around 100 in the Czech Republic (Dünkel et al., 2010, p. 1688). The judicial practice of avoiding prison sentences started with the amendment of the new juvenile law, following from which both detention and pre-trial detention rates dropped significantly in the Czech Republic.

In Hungary the penal measures applicable in any case are listed in the General Part of the Penall Code, while the exceptional rules applicable only in juvenile cases are summarized in the Chapter XI under the title Provisions Concerning to Juvenile Delinquents. The system is dualistic, thus punishments and preventive measures are applicable as legal consequences (Csemáné Váradi, 2010). Basically the same list of punishments and preventive measures is applicable for juveniles like for adult offenders only with mitigated length and gravity.[50] The only sanction which is special for juveniles is the measure of education in a closed juvenile reformatory institution.[51] Community work may be applied as a punishment only above 16 years with regard to the legal restrictions on child labour, according to which children are only allowed to work after their 16th birthday. The minimum term of the imprisonment applicable in juvenile cases is one month, while the maximum differs according to the age of the offender: for those who are under 16 at the time of the crime the maximum term is ten years, while for those who are older than 16 year the imprisonment sentence may be 15 years. Comparing the sanctioning system in penal law with the sanctions applicable in case of administrative offences, the inconsistency also shows in the minimum and maximum terms of detention and confinement. While the minimum term of imprisonment is 1 month for a crime, a maximum of 45 days of confinement may be ordered in case of an administrative offence. It may happen that a juvenile who committed a crime spends less days in detention (or rather does not spend time in detention at all) than a child who committed such and offence. In practice a child who commits thefts may better try to exceed the value threshold in order to avoid locking-up, which raises important questions regarding warranting children's rights in criminal policies. Regarding the Hungarian sentencing practice, the same tendency is

[50] The punishments applicable to juveniles are the followings: (1) imprisonment; (2) confinement; (3) community work; (4) fine; (5) interdiction from vehicle driving; (6) expulsion; (7) interdiction from sport events; (8) expulsion from the country.

[51] The possible sanctions are the following: (1) reformatory education in juvenile institution; (2) reprimand; (3) probation; (4) reparatory work; (5) supervision; (6) confiscation; (7) confiscation of the assets; (8) final deleting of electronically stored data (9) treatment in a psychiatric institution.

perceptible like in the Czech Republic: despite the number of available alternative sanctions suspended sentence is predominant in practice (Lévay, 2016).

Slovenia appears to be exceptionally welfare-oriented and lenient towards juvenile offenders in this geographical area, which makes its system one of the leading models in avoiding stigmatisation of children (Dünkel et al., 2010, p. 1700). In the Slovenian system non-intervention plays the predominant role, since juvenile delinquency is not considered to be a serious social issue. On pre-court level there is an opportunity since 1995 to divert cases to mediation, but after a short period of emergence the amount of mediation cases dropped dramatically in Slovenia with regard to the lack of funding, and the lack of commitment among legal professionals to use this method of conflict resolution (Dünkel, Horsfield & Păroşanu, 2015, p. 159-163). When the case is serious enough to be tried by the court, the vast majority of the juveniles receive educational measures instead of punishments (Filipčič, 2004, 2010).[52] About 98% of the juveniles are sentenced to educational measures, while the amount of fines and imprisonment sentences is extremely low. Although the leniency towards children in the sentencing practice and the number of available alternatives shapes the Slovenian system towards welfare-orientation, the system still suffers from deficiencies on the executive level. As already mentioned above the clearly overburdened Centres of Social Work are often unable to fulfil all the child protective and crime preventive tasks assigned to them, and therefore a number of children fail to access to the appropriate service providers or the institutions of mental and financial support institutions. According to Filipčič (2009) this experience brings on idea of the establishment of a separate Probation Service instead of Social Services, just like in the Czech Republic and Hungary.

Deprivation of liberty within justice institutions and the physical conditions of the the institutions that detain convicted are continuously debated international issues framed by a set of international standards. As the most serious limitation of a person's freedom, they the conditions and programmes provided in the institutions define the approach of the justice system and in broad terms the society itself. While this Chapter does not aim to provide analysis on to the international documents and their impact on the prison conditions in practice, it seems to be relevant to shortly summarise the rules and practices of deprivation of liberty in the countries examined. Table 30 compares the most important characteristics of the legal framework on deprivation of liberty. Furthermore, in order to give deeper insight into the reality of the institutions I used the last reports of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). According to the comparison, Hungarian regulation does not only provide the lowest age of MACR and deprivation of liberty (although this statement may be questioned in light of the Czech Regulation), but also the highest maximum of imprisonment (see Table 30). Regarding the regulations it is not surprising that the juvenile prison population is also the highest among the above countries: in Hungary 2.7% of the whole prison population is under 18 years, while this proportion is 0.6% both in Slovenia and the Czech Republic (ICPS, 2014). These numbers alone, of course, do not say anything about those juveniles who become adults

[52] Educational measures are the following: (1) reprimand, (2) instructions and prohibitions, (3) supervision by a social service, (4) placement to an educational institution, (5) placement to a juvenile detention centre, (6) placement to an institution for physically and mentally handicapped youth. Punishments applicable against juvenile are fine and juvenile prison.

during the procedure, and therefore imprisoned only after 18. The daily cost of imprisonment in case of a juvenile is approximately 61 € in Slovenia (Dünkel & Stando-Kawecka, 2010) and about 30 € in Hungary. This difference predicts further differences in quality of prison conditions provided for juvenile offenders. For instance, the Hungarian Helsinki Committee has recently found unbearable living conditions on a visit in the biggest juvenile institution in Hungary, Juvenile Detentions Center of Tököl (Magyar Helsinki Bizottság, 2014). In their report they raised complaints about the unhealthy conditions both in the bedrooms and the bathrooms, which, as they assumed, are also related to the frequent skin-diseases among juveniles. It should be noted that the command of the institution took efforts to improve the above conditions already before the official report was published by the NGO. CPT did not take special focus on juvenile facilities in Hungary on its last visit in 2013, although some remarks of the Committee concerned juvenile's special needs. The Committee expressed its strong concerns about abolishing legal obligation for providing with enough living space for juveniles, and the violence among juveniles experienced in particular institutions, as well as the illtreatment by staff members. The CPT delegation recommended to Hungary to "develop more specialized training for staff working with certain categories of prisoner", such as children. Juveniles in Hungary may also be placed in reformatory institutions with a judicial measure. These institutions are less strict and more welfare-oriented than prisons (Csemáné Váradi, 2010, p. 706). The personnel consist of social workers, psychologists and pedagogues who aim to help support juveniles rather than applying punitive practices, although the conditions strongly depend on the financial opportunities. For instance, it has happened in the past years that the girl's reformatory in Budapest did not receive enough financial support to heat up the school-building during the winter: thus the schedule of classes had to be reorganized and held in other buildings of the institution.

Table 30. Deprivation of liberty of juvenile delinquents

	Czech Republic	**Hungary**	**Slovenia**
MACR	15	14 (12)	14
minimum age of deprivation of liberty	no limit based on child-protective civil procedure, 15 (based on juvenile law)	12 (reformatory measure), 14 (imprisonment)	14 (educational measure), 16 (imprisonment)
minimum age of prison sentence	15	14	16
minimum term of imprisonment	-	1 month/ 1 year in reformatory school	6 months
maximum term of imprisonment	5 years / 10 years	10 years (16<) or 15 years (>16) of imprisonment (20 years in case of cummulation of multiple crimes) / 4 years reformatory school	5 years/ 10 years
other institutions of deprivation of liberty in juvenile justice	educational institutions (run by the Ministry of	reformatory schools (run by the Ministry on Human	

	Education Youth and Sport)	Capacities)	

Source: Dünkel & Stando-Kawecka (2010), Tables 1 and 2.

Deprivation of liberty, as well as imposing prison sentence for a juvenile in the Czech Republic is possible if they reached the age of MACR, however there is one exception in this regard: the above mentioned measure called *protective rehabilitation* may be imposed for those children between 12 and 15, who have committed a criminal act for which the Special Part of the Criminal Code allows imposing an exceptional prison sentence, while not punishable with regard to their age (Karabec et al., 2011, p. 24, p. 62). The rehabilitation may last until the age of 15 years, and it means treatment in a closed protective facility that is suited for problematic children both regarding its small size and its staff. Juvenile delinquents otherwise are placed either in prison facilities or educational institutions. It is interesting to mention that while prison facilities belong both financially and professionally to the Ministry of Justice, educational institutions work under the regulatory power of the Ministry of Education Youth and Sport, which has an important impact on their staff and methodologies. Similar reformatory facilities in Hungary also belong to the Ministry responsible for social affairs. In the Czech Republic both institutional types had been monitored by the CPT (2014a) in 2010. The Committee found that illtreatment by prison staff as well as inter-personal violence between prisoners such as beatings and humiliations are common in the visited prison. CPT found that the material conditions in the units for juveniles were generally acceptable in the institution, however the austere conditions, the insufficient meals served for young people and the educational or training of the inmates were recommended to be improved by CPT. Juvenile prisons in the Czech Republic have previously already been criticized by the Committee on the Rights of the Child with regard to their poor conditions and the lack of separation from adult prisoners during arrest and pre-trial detention (CRC/C/CZE/CO/3-4, point 69 d)). CPT has found only some minor problems in the educational facility but the general impression of the Committee was positive about it. This type of facility offers treatment both for juveniles placed here by court and children placed here voluntarily with regard to their problematic behaviour. Children are placed in units where 4-5 children share one bedroom, however this number may be smaller in case of serious behavioural problems. The staff of the institution consists of trained social workers and psychologists, who create a child-friendly environment in order to serve efficient treatment of juveniles.[53]

[53] While the CPT reported about the boys' institution in Dečín-Boletice, the author had the opportunity to visit the girls' **Juvenile Diagnostic and Reformatory Center** in Prague which receives girls with behavioural problems from Bohemia Region. The institution has double function: it serves as (1) a diagnostic institution suited for short-stay and it offers (2) long-term residence for treatment. The total capacity of the institution is 72 places, half of which is kept for diagnostic reasons. The personnel consist of social workers, psychologist, psychiatrists, pediatric physician, nurses and behavioural-therapeutic professionals. There are multiple programs and project offered for inmates and their families and there is also a shelter for teenage mothers in the building. About 300 children are placed here within one year for shorter of longer terms, most of whom gets individualized treatment focusing on their behavioural, psychological or drug problems and gets prepared to start a new life in the society.

While international guidelines do not recommend specific age limits for deprivation of liberty (Liefaard, 2008, p. 169), the Slovenian system provides such provision for the courts. The distinction between younger and older juveniles mentioned above sets the age limit for imprisonment in the sanctioning system: against younger juveniles only educational measures may be applied, thus only juveniles above 16 years can be punished with imprisonment or fine (Filipčič, 2010, 2004). However, institutional educational measures encompass two types ofmeasures: (1) placement in an institution where juvenileoffenders are placed together with juveniles with behavioural problems (whohave not committed a criminal offence), and (2) placement into a correctionalinstitution, which is intended merely for juvenile offenders. While the first is under the jurisdiction of the Ministry of Labour, Family and Social Affairs, the second is a justice institution (Filipčič & Prelic, 2011). Correctional institutions, similarly to those in the Czech Republic work with more lenient regime and child-care professionals such as psychologists, social workers, pedagogues, general practitioners, teachers of practical skills, etc. The general lenient approach of the system may be the reason of the "unpopularity" of imprisonment in Slovenia, which also results in its juvenile prison population corresponding to Nordic standards.[54] The facilities for juvenile offenders are limited to prisons in Ljubljana as a remand custody and Celje Prison, which operates a ward for juvenile delinquents. While the low number of juvenile prison population may sound impressive and child-friendly, it easily becomes a human rights issue when there is too little space to create total separation of juveniles from adult prisoners. CPT (2013, p. 19) remarked on its visit in Slovenia, that in any occasion when juveniles are held in an institution for adults, "they must always be accommodated separately from adults, in a distinct unit", and out-of-cell activities with adults shall also only be allowed with strict supervision. Therefore, the Committee recommended to Slovenia to ensure that children are separated completely from adult prisoners. The CPT expressed its concerns about any form of solitary confinement of juveniles. As for this age group, "the placement in conditions resembling solitary confinement can easily compromise their physical and/or mental integrity; consequently, resort to such a sanction should be regarded as an exceptional measure and should not last longer than necessary" (CPT, 2013, p. 28).

VI.3. Figures of youth deviance and socially problematic tendencies

Based on the comparative analysis on the build-up of the systems presented above, the crucial differences between the juvenile justice systems of the Czech Republic, Hungary and Slovenia are obvious. I was wondering if tendencies in juvenile delinquency create the differences, and if these behavioural patterns, whether they are similar or different in the three countries, are measurable. Therefore I made an attempt to find rationalities behind the three legislative faces. In this Chapter I present an overview of the results of comparative data sources on deviance and crime. However, before the analysis I have to point out, that an impetuous interpretation of the available (and seemingly comparable) data in international context may result in misleading findings. According to Stevens (2009), it is important to take

[54] By the time of the visit of the CPT (2013) in Slovenia, two-two juveniles have been placed in remand in Ljubljana and in Celje Juvenile Prison.

into consideration, that "youth offending" incorporates different acts in every country, which may change at different rates, thus, for instance the category of ‘administrative offence’ may incorporate different acts in the countries under examination (if available at all). But even if the target behaviour would be comparable, recorded statistics would probably not reflect to the level of offending with the same accuracy in every country. For instance, as Válková (2006) notes, the statistics of the Ministry of Interior and the Ministry of Justice in the Czech Republic contain data on offences of children younger than 15 years but their age is not closely specified, thus hereby the delinquent activity of children of 14-18 would be still incomparable with the Hungarian data. Furthermore, in respect of comparability, differences in age limits in criminal law play another significant role. Stevens (2009) states further that trends in delinquency are uneven across the geographic areas and groups of young people, which makes the comparison even more difficult with regard to the multiple sub-territories distinguishable within one big area of common cultural and social traditions. Keeping in mind the above mentioned potential biases, the data presented in Table 31 still represents an orientation point in evaluating the crime situation and justice reactions in Central Europe.

Table 31. Comparative data on delinquency (European Sourcebook)

	Czech Republic	**Hungary**	**Slovenia**
Offences per 100 000 population – Criminal offences: Total	3 271	4 229	4 499
Percentage of minors, among suspected offenders in 2006	*(%)*	*(%)*	*(%)*
Criminal offences	7.2	12.0	7.4
Intentional homicide	2.1	5.6	6.0
Bodily injury (Assault)	8.0	13.0	9.1
Robbery	-	48.2	33.4
Theft	14.6	25.3	15.3
Drug offences	11.5	14.9	4.0

Source: Aebi et al. (2010), Tables 1.2.1.1, 1.2.3.1, 1.2.3.6, 1.2.3.8, 1.2.3.16, 1.2.3.17, 1.2.3.25

After the transition period criminality rates increased rapidly and remained relatively high during the 1990's in these countries (Burianek & Podana, 2010; Lévay, 2006, p. 188). This trend, however, changed at the beginning of the 2000's when crime rates started to slowly decrease and got balanced on a certain level (Burianek & Podana, 2010; Filipčič, 2010). Although the high MACR of the Czech Republic biases the comparative data from 2006 (see Table 1), it seems, that the number of offences per 100.000 population would be quite close to each other in the three countries if the data on 14 years old delinquents would be available (assuming that the number of juvenile offenders grows with the growing ages, and therefore the least children will come from the age of 14). The proportion of juvenile suspects within the group of all suspected offenders seems to underpin this idea as well, because the data of the Czech Republic shows considerable similarities to the Slovenian data even without the missing age group.

In terms of deviance the most important comparative measurements are presented in the International Self-Report Delinquency Study (Junger-Tas, 2012). Josine Junger-Tas and her colleagues have involved a growing number of countries in their study volume by volume, concluding a huge database on self-reported delinquency in Europe and beyond. Reports of the national contributors provide comparable data and general introduction about the juvenile justice system and most important social issues and policy reactions of the three countries (Dekleva & Razpotnik, 2010; Burianek & Podana, 2010; Bolyki et al, 2010). In the general introduction, all here mentioned countries are referred as post-socialists.

Table 32. Lifetime and last year prevalence for large and medium cities

	Czech Republic	**Hungary**	**Slovenia**
lifetime prevalence	1.212	382	728
(percentage)	39.7%	45.3%	28.7%
last year prevalence	1.211	382	727
(percentage)	24.5%	27.0%	17.2%

Source: Junger-Tas (2012), Table 3.1.

Substance use is very common among children of the post-socialist countries, it may even be claimed that alcohol use is the "national pathology" in these countries (Dekleva & Razpotnik, 2010). According to the ISRD data, Hungary and Czech Republic have leader position in alcohol use among all European countries, and only Estonia (86.1, 46.2) has a higher prevalence rate (Steketee, 2012). The use of soft drugs is the most common in the Czech Republic, thanks to its relatively liberal regulation: procession of a small amount of drug for only personal use is a misdemenour, which indicated that many young persons have their own plants nowadays (Burianek & Podana, 2010). In contrast to the Czech trends both soft drug use and hard drug use are relatively rare in Slovenia, despite the similar drug policy to the Czech regulation (Dekleva & Razpotnik, 2010). Despite (or thanks to?) the restrictive regulation in Hungary (Bolyki et al, 2010), youth seem show higher prevalence in using hard drugs in comparison with the two other countries (see Table 5.), but also in European context (Steketee, 2012).

Table 33. Lifetime and last month prevalence for alcohol and drug use

	Czech Republic	**Hungary**	**Slovenia**
lifetime alcohol use	84.3%	85.45%	60.8%
last month alcohol use	40.1%	48.3%	25.9%
lifetime soft drug use	15.8%	14.2%	8.6%
last month soft drug use	5.5 %	4.2%	2.3%
life time hard drug use	1.3%	4.5%	1.4%

Source: Steketee (2012), Tables 5.2 and 5.3

In accordance with findings of longitudinal studies and other international research projects the ISRD traces out the face of deviance in comparison with other European countries. Josine Junger-Tas (2012) notes, that both property offences and violent offences prevalence rates show significant differences between the Post-Socialist and Western European countries, in favour of the former group. Post-Socialist countries seem to have the lowest rates both in lifetime and last year prevalence of offending with the exception of Hungary, which shows similar crime rates to Western-European countries in both regards. This, however, is not true when we look at the serious offences, where Hungarian data show average prevalence among Post-Socialist countries (Junger-Tas, 2012). In terms of gender differences, in the Post-Socialist countries girls' deviance is still very low: boys commit three times as many offences as girls (in Western Europe the number of boys is twice as big as the girls' number).

In light of the above data, analysing the information as careful as possible, we may state two important findings on deviance in the Czech Republic, Hungary and Slovenia: first, that prevalence of criminal or other deviant behaviour is not high, but rates low (with the exception of the substance use) in comparison with the Western countries. Second, that despite the retributive regulation in Hungary, which is supposed to force children via the moral disapproval to avoid misbehaviour, the most important target areas (such as drug using) seem to fail to deter juvenile offenders from committing a criminal act.

VI.4. Discussion

Lessons learned from the international comparative analysis imply further discussion about the direction of law making and practices preferred by the countries of the Central Europe. It is clear, that institutional build-ups as well as the culture of justice institutions show fundamental similarities, which may bring on the mutual usefulness of sharing experiences. The similar legal build-ups, the limited amount of resources, and therefore the lack of specialized professional education in certain fields or training among lawyers are common experiences in these countries, and play an important role in shaping juvenile justice. What established the difference is the choice of the lawmakers in the appropriate approach on juvenile justice policies. While the lawmaker in Hungary decided to follow the "though of crime" idea, Slovenia and the Czech Republic tailored their systems to become rather education-oriented. The different solutions in juvenile justice may be described the best along the inconsistencies between expectations of legal theory and the practical outcome of these rules and ideas.

Slovenia is often mentioned as the only Central European country, which has Nordic tendencies in its juvenile justice system. Most of the children in conflict with law are diverted from the justice system already on an early stage, and the majority of those who are heard by court also receive educational measures instead of punishments. The proportion of juveniles in prison is extremely low compared to other Central European, but even Western European countries' tendencies, and indeed, resemble Nordic patterns. However, it is also clear, that the generally positive practice does not follow from the carefully planned, child-friendly special legal procedures and the governmental investments into juvenile justice. Slovenia does not have a separate juvenile law or juvenile courts, there are still problems with special expertise

both in the judiciary and attorneys, and the institutions suffer from the lack of financial resources, especially Social Services, which are responsible for all non-custodial measures. What is the reason of the practice being so lenient in Slovenia? A scientifically proper answer would cost further social research on values, beliefs and behavioural patterns of the Slovenian society, which would probably exceed the framework of this thesis. In general, it can be stated, that Slovenia is a small country with a society where traditional values and the sense of community keep people tight, and mistakes have to be paid off within the community rather than in front of court. As according to the author's experiences, juvenile delinquency is not considered as an act against the society, but rather a natural part of puberty, from which children are going to grow out anyway - with or without institutionalized reactions.

The populations of Hungary and Czech Republic are almost five times bigger and more concentrated into the big cities then it happens in Slovenia. This has a considerable impact on the patterns of criminality and delinquency in particular. The build-up of the society, together with the above mentioned similarities in legal traditions, current political ircumstances and the patterns of delinquency and other deviances imply similar practical outcome in Hungary and the Czech Republic. However, when looking at the legal regulation the rules miss to justify this theory. The Czech Republic managed to introduce restorative practices in its legal regulation, based on which the system aims to apply the least harmful and the most effective practices against juvenile delinquents. Although the judicial framework has not been changed fundamentally, considerable efforts had been taken on emphasizing the new direction of juvenile justice. Legal amendments and policy development of the past years added important value to the juvenile law in the Czech Republic but apparently, the lack of investment into practical innovation resulted in a less positive approach in the field than in law. Compliance with the rules is rather dependent on the ambitions of professionals than on centralized planning, and while the innovation requires civil contribution.[55]

In contrary to the Czech Republic, the above positive policies concerning deviant children, Hungary developed a juvenile laws based on prohibitions and repression rather than support and help. Although the introduction of alternative measures and protective systematic elements was slow ever since the transition (Herczog & Irk 2002), the system has always had certain resources to invest into innovative practices in juvenile justice. The declared turn to the control-based and punitive policies was introduced by the amendment of the Act on Administrative Offences in August 2010, and it entailed a number of institutional changes and the complete cut of all the previous governmental resources other than those which are necessary for the operation of justice institutions. The punitive approach in juvenile justice

[55] As an example for civil contribution in justice improvements Rubicon Centrum can be mentioned, which has 200 ongoing programs in the 76 mediation and probation offices of the Czech Republic. Their special juvenile probation project, the PUNKT Family Program aims to provide help for those children who are sentenced to probation and who are in the highest risk of recidivism. The joint project of the Rubicon Centrum and the Probation and Mediation Service of the Czech Republic follows the know-how of a Swiss program. The training program consists of 13 (group and individual) meetings, where both juvenile and their family-members participate, and where participants have the chance to discuss their feelings and expectations towards themselves and each other. In case of positive results, the project may be implemented to the regular practice of the Probation and Mediation Service. Further projects of the NGO are working on the more effective involvement of Roma people in justice programs (Roma-mentoring), provide help in re-socialization (re-qualification, employment) for ex-prisoners and debt counseling for people with criminal background.

seeped into the child-protection as well. From January 2015 child protective authorities may order preventive supervision during the pre-trial term in those cases where children committed minor crimes. The task is purely supervisory, support and help in re-establishing family relations or discovering psychological needs of the child are not obligatory according to the law. The fact, that this law was welcomed by a number of professionals in juvenile justice and child protection points out that the system is likely to implement certain punitive ideas into their practice, and makes reality consistent with the ideas of the law maker (see also confinement in minor delinquency).

In conclusion, this research underpinned, that mentioning 'Post-Socialist' or even 'Eastern European' countries as being similar in respect of their juvenile justice systems requires more careful preliminary evaluation on the certain topic. Apparently, social construct and traditions, economic status of the country and the political orientation of the current government seem to be more important factors in determining the general face of the juvenile justice than the often referred historical roots. It is also important to see, that although remains of the Post-Socialist heritage are still present in certain institutions, these do not necessarily transmit negative tendencies which contradict children's rights, on the contrary: those legislative ideas which stem from the Socialist era may be the perfectly child-friendly and supportable, such as the minimum age of deprivation of liberty in Slovenia.

CHAPTER VII

CONCLUSION

The research project on the institutional control of youth criminality in European comparative perspective was conducted between September 2011 and July 2016 in five European countries: Hungary, Finland, Slovenia, the Netherlands and the Czech Republic. The main purpose of the research was to gain deeper understanding on how juvenile justice systems operate in Europe, and what constitutes their different or similar approach and institutions.

The first step towards the recognition of the key elements in policy and law was the development of a methodology that provided a relatively strict comparative theoretical framework. For this purpose I first reviewed the international comparative works on juvenile justice. Based on the strategies used in international studies, the actually available research-opportunities and my field of interest in the study I decided to use and further develop the comparative methodology of Winterdyk (2002).

In the second step I defined the main research questions that are both relevant in the comparative research on juvenile justice systems in Europe and provide a new aspect of comparative analysis. *In criminology,* developmental and life-course studies have revealed a number of important factors in life that may lead to involvement into criminality or may play a role in preventing the engagement in criminal behaviour. A great deal of these factors root in childhood and early adolescence, and they are often recognised only within the juvenile justice system. With regard to this it appears to be of high importance that strategies interpret these results correctly and actual justice measures provide relevant intervention programmes to prevent further involvement in crime. Nevertheless, the importance of these results shows not only in the appreciation of the international academic community, but also in the successful intervention projects based on these findings (see further in Chapter II). In *international law* the recognition and protection of children's rights is an emerging field that has encouraged both developmental research and a number of legal analyses on the legislative solutions and effective interventions in juvenile justice. Heading towards the 30th anniversary of the adoption of the Convention on the Rights of Child the significance of children's rights is still growing within Europe. The correct implementation of children's rights requirements is of high importance even within the European Union. An increasing number of strategic and policy-documents highlight the importance of the age-sensitive, problem-oriented treatment of child and juvenile offenders on all levels of international regulation, urging states to take the Rights of the Child, as stated in the UNCRC and related documents, into consideration and review their laws accordingly. With regard to the emerging children's rights movement, building the analysis of juvenile justice institutions on these requirements was self-evident.

In the third step I conducted research in the five countries mentioned above. While the "headquarter" of the research project was the Eötvös Loránd University in Hungary, I took

short research visits in Finland (May-June 2012), Slovenia (January-February 2013), Czech Republic (September 2014), and a longer visit in the Netherlands (July-November 2013). Research included collecting relevant literature, conducting interviews with academic researchers and field professionals and visiting institutions, including closed youth facilities. In the last step I assessed the information and data collected during the desk research and the study visits, and pieced the information together in a manner that provides comparable structures and hopefully a clear overview about the positive developments and problematic question of juvenile justice systems in Europe.

After providing an overview of the developmental perspective of children's lives and its interpretation in criminology and psychology (Chapter II), introducing the most important international documents and the key problems of juvenile justice within the European Union (Chapter III), presenting a the six basic models of juvenile justice (Chapter IV), analysing the state of implementation of children's rights in the six model countries (Chapter V) and providing a comparison on three Central European juvenile justice system, in this Chapter I will provide methodological remarks and summarize my conclusion on the hypotheses.

VII.1. Methodological conclusions

Methodology has been a crucial element of this research from the very beginning, therefore I would like to begin my conclusions with some remarks on study design and the process of implementation itself.

VII.1.1. The benefit of analysing only a few countries

When I established the methodology of this research I expected that comparative studies that include only a small number of countries are easier to process and take less time to conduct. They can also provide a more detailed overview and a better explanation on particularities than those studies that include a large number of countries. For a single researcher the limitation of the amount of countries is also important to be able to gain the necessary understanding of all systems. This allows the author to invest her time into analysing the connection between different systems responsible for dealing with juvenile delinquents, as well as to study specific institutions within these systems and understand their role and the possible bias in them.

The research proved the above presumption. Studying only relatively few countries provided the opportunity to understand the different models and work out the comparative structures as well. Most importantly, it allowed the opportunity to discover what constitutes differences in certain systems, even despite the seemingly formally similar structures. As an example the regulation of mediation may be mentioned here, since its application, although it covers similar restorative strategies in every country, may be motivated by various legal and non-legal goals, and may lead to different legal consequences.

VII.1.2. Disadvantages following from the lack of language knowledge

Although I had the advantage to speak four languages (Hungarian, English, German and Dutch) from the six languages (Hungarian, English, Dutch/Flemish, French, Finnish and German) spoken in the model countries, in some cases the lack of understanding in the missing languages caused difficulties in finding appropriate sources. This was true in particular to my research about the Belgian system. In this system tasks are divided between the Federal State and the Communities, which speak different languages. While sources about the federal regulation and the Flemish community were available in Dutch, sources about the French Community are available in French. Also, with regard to the fact that one of the official languages of the country is French, international sources are sometimes also available in French instead of English. For example, among the CPT sources I could not use the last report in the CPT about Belgium, because it is only available in French.

I experienced similar difficulties in Slovenia and the Czech Republic, where besides having hard time to find up-to date literature in a language that I understand, I also had to face difficulties in the communication during my study visits. Regarding to the countries of Central Europe part of my conclusion is that a more intensive communication of the critics and developments of their juvenile justice systems in the international field would probably promote the better understanding of this region of Europe.

VII.1.3. Disadvantages following from the lack of research visits

As already mentioned in Chapter I, despite my efforts to require funding I did not have the opportunity to visit all countries that I examined in this research. I intended to balance the lack of interpretation by local experts and personal impressions by applying preliminary literature review and analysis, and adapting my personal experience as an occasional, explanatory tool. Even though this method helped in producing a text that is based on relatively objectively selected sources from international documents, scientific journals, books, NGO reports and governmental papers, the missing guidance by local experts affected the quality of my work significantly. This disadvantage in respect of England, Scotland and Belgium prolonged the research period as well as the drafting process. In case of the rest of the countries I managed to gain a general picture and understanding of the main features of the system during the research visits that guided me in drafting the text and helped to fill it in with relevant details. In case of the three missing countries it was a lot more effort to find orientation points in the literature and most importantly to interpret the meaning and consequences of certain legal rules. In conclusion, I believe that this study could be further improved by accomplishing the missing research visits and conducting interviews with local professionals about the key questions analysed in the previous chapters.

VII. 2. Conclusions on the hypotheses of this study

VII.2.1. European countries show significant differences in their understanding on 'risk' of youth criminality as well as their policies on control, which can be understood as the result of the discrepant interpretation of child development and children's rights.

1. General observations on the perception of "risk" in the models of juvenile justice

The *general philosophy* of the different models has been examined in this study using historical perspective. This perspective aimed to show how the juvenile (youth) justice systems have developed throughout time, which approaches or institutions have risen and were abandoned, which characteristics remained static, and which are responsible for changes and development. It was interesting to see that basically all juvenile systems that are introduced in the previous chapters stem from the "child-savers" reforms at the beginning of the 20th century, moreover, four of them have been established in the same year. Differences between the original systematic solutions existed already at this period following from the genuine differences in the legal system and the local opportunities to e.g. establish new institutions for the purpose of education of youth offenders. Since the beginning of the 20th century political, economic and social changes and efforts left their marks on the systems. Some of these ideological and pragmatic shifts affected multiple countries parallel, such as the so-called 'punitive turn' in the 1990's, which had great influence on the systematic developments in the juvenile justice systems of Western Europe. Hungary, as a post-socialist country just awakening from its 'winter sleep', was re-establishing its laws and social policies at this period, which limited the law- and policy-making to the legislation of the basic institutional structures. The emphasis on risk management, which has been in focus of the policies in Western Europe since the 1990's, has only recently reached its penal strategies.

Risk management *as the objectiv*e of the juvenile justice system appears to be an important goal in all countries examined, with the exception of Finland, where the vast majority of the juvenile offenders are diverted to the child protection system, and receive child protective support rather than intervention that promotes specifically the prevention of re-offending. In the other countries the concept of "risk" is not always expressly defined. The Belgian YPA emphasizes the intent to implement restorative techniques into the juvenile justice system, and with this represents a different approach from risk-oriented intervention. However, there are risk-based techniques applied among the intervention tools, and risk of recidivism, especially of the recidivism of those who commit serious offences appears to be a relevant consideration with regard to the need for warranting the safety of the society. In the Hungarian system the concept of risk has been implemented only for a few years. Risk assessment, as usual in the European justice systems, became the task of the probation service that applies a special tool to evaluate potential risk of reoffending. This tool may also be applied for non-offenders, as for instance in case of children who commit administrative offences, and with regard to this the child protective authority considers their preventive supervision. These rules may be perceived as a first step towards establishing a system that considers "risk" a central question. Beyond this, Hungary has built a juvenile justice system, which, in general, tolerates little and intends to control more. In this system where all crimes and antisocial acts are perceived as threat and are responded to harshly, the role of risk

assessment may only be to distinguish groups of offenders, but it will have little effect on the actual intervention. Tools of risk assessment in England have high influence on creating the major characteristics of the juvenile justice system, therefore they are often targeted by heavy critics. In Scotland and the Netherlands, where risk assessment tools are applied for the classification of youth offenders, and based on the evaluation a number of intervention programmes are expressly targeting risk of re-offending. Based on the approach of the systems and the methods applied, three ruptures may be distinguished which establish "risk" of re-offending in case of a youth offender: the *age*, the *gravity of the offence* and the *socio-economic status*.

Juveniles younger than *16 years* are systematically distinguished from those who have reached the age of 16. In Belgium and the Netherlands juvenile offenders above *16 years* may be transferred to adult courts (although with restrictions), while in Scotland the legal practice keeps older juveniles within the adult system. But even if older juveniles are not treated as adults they may be subjects of more serious measures and punishments than those of younger age: in the Netherlands older juveniles may be imprisoned for 24 months, while younger juveniles may only receive a maximum of 1 year of imprisonment. Although the juvenile sentence in the Netherlands results in a still relatively short term of imprisonment, the age limit shows that older children represent higher risk than younger children when they commit criminal acts. This age limit is clearly an unofficial threshold in the European justice systems, which separates "delinquent children" from "offending adolescents". In this respect the first group represents relatively low risk of re-offending, while the acts of adolescents in second group are perceived similarly to the acts of adult offenders.

The *gravity of the offence* naturally influences the measure or punishment imposed against any offender of crime. However, it seems that serious youth offenders are often treated as adults regardless to their age or best interest. In England it is allowed to try youth offenders from the age of 10 in front of adult courts despite the opposition of national and international experts. As the practice shows, the result of such proceedings put children into a position where their rights are limited or revoked. Although the age of the defendant youth who may be transferred to adult court is limited in Belgium and the Netherlands, children's rights violations are still relatively common in these cases (see Chapter V.1.2.). At the other end of the gravity scale offenders of minor crimes can be diverted from all six juvenile justice systems, mostly already at the prosecutor's level if it is likely that they will not commit criminal acts again. Conditional and non-intervention strategies are both available, although not applied in every country. While in Scotland the policy of minimum-intervention aims to avoid unnecessary intervention, in the Netherlands almost every offender of minor crime has to face at least Halt. Consequently, in general policies and agencies of the justice system tend to be rather lenient towards minor offenders and apply educational or supportive measures, diversion or non-intervention, while serious offenders are targeted with control-based sanctions that are often executed within the adult justice system. As an example for the control model, Hungary is an exception from this trend: the policy promoted here requires the implementation of repressive and deterrent punishments, therefore youth offenders, regardless to the gravity of their offence, risk deprivation of liberty for every crime they commit, and even those non-criminal acts.

The evaluation of the relationship between *socio-economic status* of the offender and the risk he may or may not represent is probably the most problematic issue in the contemporary justice systems, and it is present in the youth justice as much as it is in the adult justice system. Most of the risk factors that are listed in the international literature on longitudinal research are related to low social-economic status, such as bad neighbourhoods, broken communities, offending friends, low education level, substance abuse of parents, unemployment, etc. It is not surprising, that risk assessments conclude, that youth offenders with a lower social-economic status are at higher risk of re-offending. Therefore they are more likely to be taken under justice control or become involved into intervention-programmes and labelled as criminals, even though their only mistake might be that they were born into a wrong family or community. This simplified tendency has a wide literature that details the characteristics of wilfully discriminatory regulation, purposive and unintended discriminatory practices by justice authorities as well as the ruptures of the contemporary societies in cultural and economic sense. Examples of the discrimination against the poor and disadvantaged youth can be found in every juvenile justice system. In England the policy on restraining incivility and the related social policy have been criticized in the past decade, because of its exclusive and depriving nature (see subchapters IV.3 and V.4). These policies have recently been reviewed. Similarly to England, the Netherlands has also implemented strategies, which targeted deprived groups of the society. Unnecessary, moreover unlawful and stigmatising intervention to family-life had been claimed against the STOP programme, which in some extent may also be claimed against the Halt intervention. In Hungary the recently implemented legal institution of preventive supervision has a comparable content and impact on youth as the Western-European examples. The institutionalised discrimination within the justice- and social systems projects the general experience of fear from those who differ from the majority of the society and as such first and foremost youth of Roma and immigrant origin.

It seems obvious, that although European countries are likely to follow common trends in approaching youth criminality, such as targeting "*at risk" population*, the actual reaction depends rather on the genuine philosophy of the model than the international trends. "Risk management" building on "risk assessment" is understood differently in England than Scotland: while England perceives risk factors in the family and in the child's personality as potential threat that has to be eliminated by coercive and rather exclusive strategies, Scotland perceives the assessment of risk factors as information that may be used in favour of the child. As McAra and McVie (2007) note based on the results of the Edinburgh Study, that non-intervention is still the best solution to elimination of further risk, even in case of persistent offenders. The difference in approach between the Netherlands and the Belgium shows in their systematic responses. While the Dutch system is formal and rigorous in implementing policies that aim to tackle risk, the Belgian system is flexible and tolerates a wide range of informal solutions. In the Netherlands it is unlikely that a juvenile who commits even a minor offence slips out of the hands of the authorities without the evaluation of the risk he could mean to the society. Everything is calculated, planned, and labelled. The Belgian youth justice system chose a rather rational and humane version of eliminating risk in general, however this might also lead to arbitrary practices in deciding of what constitutes "risk", and what deserves to be treated by means of juvenile justice. Finally, although Finland and Hungary pay the least

attention to "risk" among the here mentioned countries the represent two extremes of control of youth offenders: while in Finland only few cases can reach the threshold of the risk that shall be responded by justice measures, in Hungary the diversion to the child protection is almost impossible as long as a justice measure is available for the crime.

It is often argued in the international literature as critic of the contemporary juvenile justice systems that the strong focus on "risk", and the crimes that "might happen" in the future have turned over the balance of justice interventions. According to the critics, there should be more focus on the needs of children *in order to become* a non-offending adult, instead of the intervention focusing on the risk factors that may *prevent to continue* offending behaviour. The risk factor prevention paradigm (RFPP) has been target of grave critics throughout the past decades. Case and Haines (2015) divided critical questions into three main groups:

1. Critics that target the concept of 'risk' as quantified and aggregated into simplified factors. According to the authors these critics express valid doubts about the oversimplified and unrepresentative measurement of dynamic, subjective processes and interactions of young people.
2. Critics that question the validity of measuring the outcome of the perceived 'risk': namely, it does make a difference whether we examine 'risk' that young people present to themselves, or that they present to others, or the risk of reoffending, reconviction, or repeated antisocial behaviour.
3. Critics that aim to challenge the understanding of 'risk factors' as phenomena in casual relationship with the offending outcomes. However, even if we accept the invalidity of this assumption, the nature of the above relationship can still be described in a number of ways that may lead to worrisome conclusions.

Nevertheless the criticism does not mean that the idea of risk management shall be abandoned: establishing risk factors is useful to orient relevant authorities to the area of intervention, while identifying needs of children in the given situation would help to establish the effective methods that provide real, individualised help. In line with this approach on risk, the "children first, offenders second" philosophy promotes the idea, that youth people who commit criminal acts are supposed to receive support rather than punishment or a measure of pure control. However, they should not only passively receive help, but they shall participate in solving their own problems and finding the right way in their lives which includes facing their behaviour in the past. This indicates that youth offenders shall become involved in a complex process, where multiple factors (life circumstances, experiences, perspectives and needs) have to be taken into account and reflected when appropriate. According to Case and Haines (2015, p. 113) "it is imperative that offending be seen as a part of the child's broader identity (Drakeford, 2010) rather than their defining master status and that any responses are appropriately whole-child as a consequence".

2. Observations on the fulfilment of the UNCRC criteria in key areas of juvenile justice

With regard to the significant differences between the States Parties' legal systems, the UNCRC and the related international documents are focusing on the required outcomes rather than the legislative solutions. It is the task of the national legislative bodies to decide which

concrete legal solution will lead to the fulfilment of the requirements. When reviewing the existing laws, law-makers shall take into consideration the principles and requirements of the UNCRC as explained in the General Comments of the Committee on the Rights of the Child, in particular General Comment No 10. The latter document provides guidance on the structure and key elements of a juvenile justice system that shall be considered by States Parties during the revision of their laws according to children's rights principles. These documents reflect to the requirements listed in the UNCRC as well as the experiences on effective implementation of them. For example, when explaining the required regulation on age limits, General Comment No. 10 established the basic requirements to an 'ideal' system next to reflecting to the practices that allow exceptions from MACR in cases when children committed serious offences, or the transfer rules, that allow the exception from being treated as a juvenile under the age of majority. This way the Committee on the Rights of the Child makes it clear which of the existing practices are acceptable and which are to be avoided or abolished. Practices that are considered to be disadvantageous for children and therefore not comprehensive with the UNCRC are often claimed to be 'traditional' or 'better fit' to the existing regulation of justice. Generally, contrary to the international regulation, national laws tend to concentrate on legal opportunities rather than the outcomes they would like to reach at the end of the procedure. However, the international regulation clearly requires that law-makers take distance from the legal traditions and the currently operating systems, and take efforts to shape their legal reality towards the fulfilment of all requirements.

In my conclusions on the key aspects of juvenile justice I will focus on the required outcomes and the potential risks in certain types of legislative solutions.

Age limits

Although ideal age limits are not expressly mentioned in the UNCRC or the related standards and guidelines, these documents still agree that the MACR shall be understood as an absolute minimum age, under which no child can be prosecuted or punished for committing a criminal offence. Furthermore this age limit shall be set at an age when a child has reached the level of maturity when he is able to understand his own actions and well as the legal procedure as a consequence of the crime. This set of requirements on MACR shall be understood as a minimum standard that provides a guarantee that is of the same importance as other procedural standards in juvenile justice. While this suggests that MACR may not be a flexible rule within the national regulation, it remains flexible in international sense, thus every country shall have the freedom to decide which age limit is the best fit to the national legislation. The Committee on the Rights of the Child recommends the age limit to be set between 14 and 15, but it may be acceptable if it is set as low as 12 years when the regulation on juvenile justice keeps the system in balance with children's rights.

Using the freedom that is provided by the flexibility of the international regulation the model countries I that had been analysed in Chapter V apply very different age limits. Among these countries the lowest age limit, below which children shall not be made responsible for their criminal acts is applied in England, and it is set as low as 10 years. Moreover, this age limit represents not only the minimum age of criminal responsibility, but also the age when youth offenders may be tried in front of adult court. Despite the heavy international critics on the low MARC, England has rejected raising the age limit so far. In contrary to Scotland,

where MARC is set at 8 years officially, however children under 12 years cannot be held liable in front of court, and neither can they be prosecuted later on for an offence that they committed before their 12th birthday. The adoption of this rule in 2010 showed the engagement of Scotland to tailor its juvenile justice system towards being in line with children's rights. Similarly to Scotland the Netherlands also set its MACR at 12 years, while the respective age limit in Finland is 15 years. The highest MACR is set in Belgium, at 18 years, although this does not mean that Belgium does not have a juvenile justice system, only that they approach delinquency from a rather welfare perspective. In fact, in those countries, where MACR is relatively high, such as in Finland and Belgium, not only the decision-making process happens in the welfare system, but the institutions that are assigned to treat youth offenders are also embedded into this system. Closed facilities such as the reform schools (kotikoulu) in Finland and closed youth care centres in Belgium are formally parts of the child protection, although they fulfil the same role like their justice-based equivalents in other countries.

The new Hungarian regulation on MACR generated serious debates at the time of its adoption in 2012. The most important characteristic of these debates is that stakeholders approach the question of MACR from a number of different viewpoints, however in the matrix of arguments and counter-arguments one can hardly find battling statements. Generally both groups, pro and contra lowering MACR, raise arguments from the field of primary and tertiary prevention, historical development, and legal theory. The observations on social and physical development of children are also used as important arguments to support either lowering MACR or raising it. At the same time criminologists and criminal lawyers are likely to agree in the need for a child protection system that applies effective methodologies of general prevention, or the need for specialised judges, prosecutors, probation workers and other professionals. However, these arguments usually highlight one argument, and lack a structure that would allow debate on the merits of the problem and lead to a better strategy. Furthermore, I believe that the arguments on the insufficient effectiveness of primary prevention and the operation of child protection are marginal in this debate, because the debated issue is how to deal with the situation when these structures are already proven to be unsuccessful, and where secondary prevention shall be emphasized rather than tertiary.

One of the leading supporters of lowering MACR is András Vaskuti (2015), a practicing judge and academic in Hungary, who proposed the idea of the separation of responsibility and punishability of offending youth as a possible improvement of the existing regulation. In his opinion children of younger can be just as mature as their older peers, therefore one MACR does not guarantee a fair procedure. Therefore he argues, that children of younger age who have reached a certain level of maturity should be allowed to hold responsible by the court in order to face their wrongdoings, but the procedure of the court should not necessarily lead to actual intervention, especially not deprivation of liberty of children. Although I strongly disagree with Vaskuti, the relevance of MACR and shortcomings of the Hungarian system can be perfectly demonstrated through the theoretical mistakes in his idea. First, in terms of the UNCRC, MACR serves as a minimum guarantee, securing the formally recognized innocence of all children under a certain age. The assumption of innocence here shall not be based on the actual developmental stage where children are, but on the belief that children under this are generally unable to responsibly

foresee the consequences of their actions. As a guarantee, it should be understood as a rule that excludes the responsibilization of children in criminal law, rather than one that establishes 'limited responsibility' of juveniles. The existence of such a limit, naturally, leads to unjust situations, where there only one day difference in age distinguishes the offender and an irresponsible child, but the price for preventing imbalance on the level of actual interventions should not be paid by children. It is the institutional background that shall provide appropriate and proportionate measures that reflect to both the age of the offender and the gravity of the criminal offence. In an ideal system the transition from childhood to the juvenile age cannot lead to disproportionately different treatment, because there are appropriate measures available both in the child protection system and the juvenile justice to respond in a right manner to the behaviour and the personal circumstances and needs of the child. This also means that there should be a variety of alternatives available to deprivation of liberty, while this should be applied as the measure of last resort and for the shortest appropriate period of time. Second, it is hard to imagine how a judicial decision that establishes purely responsibility without assigned consequences would serve the best interest of children. A child as an offender shall be responsible primarily towards his community for his actions, and not towards an independent court. The formal establishment of responsibility by an independent entity would probably stigmatise the child rather than help him to communicate his regret towards the community or to be forgiven. Therefore it would be more useful to implement alternatives to the judicial procedure that promote the restorative idea and help the reintegration and rehabilitation of juvenile offenders within their communities.

The upper age limits shall also correspond to the UNCRC, and according to this, provide the guarantees of juvenile laws for children under the age of 18. Similarly to MACR the purpose of this age limit is also to become a guarantee for all children, regardless to their biological maturity or the crime they committed. Transfer rules, that establish exceptions from this requirement, are therefore not compliant with the international rules. As presented in Chapter V, these rules imply a number of risks from depriving children of their rights, to punishments with harmful consequences to the child's development. Taking these risks would be not necessary if countries would engage in preventive strategies specialised to serious juvenile offenders, responding to their needs as well as the gravity of their offence.

Alternative measures

The task of national law-makers is not only to provide alternatives to deprivation of liberty, but create measures that a) are age sensitive, b) respond flexibly to the personal circumstances, c) take the gravity of the offence into consideration. Further requirements state that alternative measures shall a) as far as it is possible divert children from the justice procedure, b) be community-based and c) promote restorative techniques. These requirements indicate that a great number of measures should be available in every juvenile justice system to provide relevant alternatives to the variety of cases police officers, prosecutors and judges have to face. Furthermore police officers, prosecutors and judges should be able to choose the most relevant from the available set of measures, therefore their education and training is of particular importance.

The Netherlands has a leading position among the countries examined here regarding the number of alternatives offered. Beyond the informal diversion to the child protection, a

number of special methods and alternatives (such as Halt, OM-afdoening, mediation, night-detention) are offered to various forms of deprivation of liberty throughout the justice procedure. The court can also apply a variety of classical (e.g. suspended imprisonment, probation, fine) and new (e.g. behavioural measures) alternatives before considering imprisonment. The approval of the Recognition Commission on Behavioural Intervention in Justice (*Erkenningscommissie Gedragsinterventies Justitie*) requires that the methodologies of intervention programmes are evaluated to ensure that the court receives appropriate information about which method fits best to the child's needs and the crime committed. Other countries, such as Finland, offer limited amount of alternatives in justice, however they also tend to avoid justice intervention. As a result of this, both the volume and the variety in alternatives must be reduced to offer appropriate justice response to serious offending in this system. In Belgium, both deprivation of liberty and its alternatives are child protective measures unless the juvenile has been transferred to the adult court. With regard to this, alternatives to deprivation of liberty are unusually strongly welfare- and support oriented, or of restorative nature. In Scotland a referral to the Children's Hearing system formally implies diversion, however this is not yet a guarantee that deprivation of liberty will not be applied for the case, only that it will not be based on justice grounds. Among the available alternatives and child protective measures, supervision is the most frequently applied in this system. For older juvenile offenders who are typically not diverted to the Children's Hearing there is a variety of available orders that promote community-based intervention and restorative practices. Alternatives to deprivation of liberty in England are primarily restorative measures, where significant efforts have been taken in the past years to strengthen the position of the victims of crime. Hungary offers alternatives to deprivation of liberty throughout the procedure as well as the sentencing level, however the application of these is still overshadowed by the application of suspended sentences. The latter suits to the objective of deterrence (see Chapter IV.6, point 4) because of the threat of imprisonment in case of the breach of behavioural rules set in the sentence. The effect of improving the system of alternatives is best shown in case of the Netherlands, where the juvenile prison population dropped dramatically in the past less than ten years (see Chapter V.2., the Netherlands).

Deprivation of liberty

Deprivation of liberty of children is probably the best regulated area of children's rights on international level. A number of documents of the UN and the Council of Europe deal with certain aspects of deprivation of liberty of children. The most important of these documents are the UNCRC, the ICCPR, and Rec(2008)11 of the Council of Europe. Based on these documents I identified and analysed six key questions regarding to the deprivation of liberty of juvenile offenders: (1) separation of adults and non-delinquent children, (2) physical conditions of the close facilities, (3) violence in juvenile institutions, (4) monitoring of institutions and complaint mechanisms, (5) contact with the family and (6) deprivation of liberty as a measure of last resort applied for the shortest appropriate period of time.

The separation of adults from children and delinquents from non-delinquent children are still challenges to some countries, primarily in case of police custody. Convicted offenders are usually required to be placed in juvenile institutions or reformatories, but some countries, as for instance the Netherlands, have no specific legal requirement on the separation of

juvenile offenders from adults to be able to provide the opportunity to place young adult offenders to juvenile institutions. The practice of Finland provides an interesting example to the problematic nature of extreme low prison population, namely that the small number of juvenile offenders makes it impossible to treat young offenders in separate institutions or even separate wards without the risk of solitary incarceration. Similar pattern can be discovered in Slovenia.

The quality of physical conditions of the closed facilities depends on various factors. CPT reports not only on the strictness of regulation and the actual cleanliness of the building, but also on the opportunity for physically and intellectually stimulating activities for the inmates, which are highly important in the adolescent age. 2-3 persons' cells equipped with toilet and sink, receiving natural light, and providing adequate space per person seem to be sufficient places for juvenile offenders in general. Most of the countries in this study provided these conditions, with the exception of Hungary where juvenile facilities seem to struggle with fulfilling basic hygienic requirements and struggle with overcrowding and large cells. Offering adequate daily schedule and meaningful activities to juvenile offenders still seems to be an issue in multiple countries, even in the welfare-system of Belgium.

Increased risk of violence in juvenile facilities follows from the special characteristics and relations within the totalitarian institution. It may be discovered both in relation of staff and inmates and between inmates, and it may be verbal or physical. Violence by staff is often reported to be related to the situations where disciplinary measures are applied, while peer-to-peer violence has important role in establishing hierarchy among the inmates. Shortcomings in the prevention of violence can be discovered in every system and practically every institution and therefore the need for well-trained and responsible staff is still significant. It is generally believed that prison staff with better qualification and skills would decrease violence and it would have a positive impact on the juvenile's behaviour in the institutions as well as outside of the prison.

Monitoring of institutions and complaint mechanisms in closed facilities aim to ensure that the rights of the children are respected and violations will be investigated. All countries in this research have organised monitoring mechanisms, implemented typically by national or regional ombudspersons and/or special monitoring bodies for prison facilities. Complaint mechanisms are also implemented in every system, although it would require further research to draw conclusions about their adequacy both in procedural sense, in respect of the increased vulnerability of juvenile detainees to suffer negative consequences because of the complaint, and their lack of trust in truly just adjudication.

The requirement on contact with the family is closely related to the requirements in Article 9 on the separation of children from their parents, that requires "one or both parents to maintain personal relations and direct contact with both parents on a regular basis", including representation or participation in legal proceedings, except if it is contrary to the child's best interests. Both accused and convicted children shall have the opportunity to maintain contact with their families via letters, phone and visits (at least once in 1-2 weeks) although this may be restricted in the pre-trial phase. In some cases children are allowed to leave the closed facilities with or without supervision and visit their parents at home.

Deprivation of liberty as a measure of last resort applied for the shortest appropriate period of time is similar to the regulation on the minimum age of criminal responsibility in the

sense that it does not contain clear instructions on what counts as short or long in context of the different forms of deprivation of liberty. Accordingly, states do not only apply different terms of imprisonment, but they also use different types of regulations. In respect of the application as last resort, the Netherlands provides a good example with a large variety of available measures that are applied as alternatives to detention. Its application as the measure of last resort is ensured by various legislative techniques. For instance, in the Netherlands it is explicitly prohibited to apply deprivation of liberty in case of minor offences, in Scotland there is an age limit to placement to detention facilities (which does not exclude all forms of deprivation of liberty), and in Hungary juveniles under the age of 14 years cannot be sentenced to detention, only reformatory education. It is not possible to judge which regulation is the best or worst in light of children's rights, but it may be concluded that the less juvenile suspects or convicts are detained in a given system the more it will be appreciated by monitoring bodies of children's rights. In this respect the absolute European winner seems to be Finland, where only few children are detained at the same time – although this does not exclude the deprivation of liberty in reformatories, under child protection laws. In the subchapter V.3.6 I collected the legal maximum lengths of detention according to the age of juveniles in the six countries. The table shows that although most juveniles are treated relatively leniently in the justice systems of the Netherlands and Belgium, those older than 16 years may receive a maximum of 30 years of imprisonment, while in England and Scotland children may be sentenced even to detention for life.

Institutional response to petty delinquency

It is an often claimed fact about petty criminality that these offences give the vast majority of the offences committed by children, who are often first-time offenders and who will probably not engage in the life of crime but desist after the first offence. This criminological observation puts a serious responsibility on states that aim to implement a regulation, which provides a response that motivates children to desist, while it also makes children aware about the consequences of a crime. Policies vary on a scale between the repressive, short sharp shock, strategies, as for example in Hungary, and the most lenient approach, that perceives justice intervention of any kind as a response to petty crime as unnecessary, and offers child-protective support instead. The Anti-Social Behaviour Act that established Anti-Social Behaviour Orders to fight incivilities and minor crimes implemented the most controversial policy in England in 2003. The regulation received harsh critics from defenders of human rights, international human rights bodies (e.g. CRC) as well as academics. Critics targeted the discriminative, stigmatizing and restrictive nature of the policy that aimed to threaten and label juvenile delinquents rather than supporting them in desisting from the negative behavioural patterns. ASBO's have finally been replaced in 2014, by a less repressive regulation focusing on the involvement of the victim and the cooperation of relevant authorities in support of the delinquent. Similarly to the English example, the introduction of short sharp shock for juvenile offenders who committed administrative offences in Hungary was also received with massive obstruction from NGO's, academics, the national ombudsman and from professionals. Despite the negative feedback the law came into force and remained applicable. Hopefully the English example will be as influential to the Hungarian policy-makers as it was at the time of the introduction of the regulation.

Even though there are more examples to lenient policies then to the above extremes in international context, critics based on children's right can be held against every country. Although the regulation in the Netherlands is based on the generally supported idea of diversion, research shows that the intervention applied supports only those juveniles who represent very low risk of reoffending, while in Belgium arbitrary practices have been reported. In Finland the majority of children are informally diverted to the social services, which results in more beautiful statistics, but hides the volume and nature of the intervention. The critical voices on the response to petty offences and minor crimes call for more attention on what we think about our disorderly youth and how we would like to teach them the lesson about crime.

Discrimination

Probably it is not hyperbolism to conclude that tolerance and cultural understanding are still not prevailing characteristics of the justice systems of Europe. This is one of the reasons for the often reported fact that, even though there is intent to do so, juvenile justice systems fail to treat ethnic minorities and immigrant children alike as non-minority children. Children who belong to these groups often suffer from prejudices and labels, which lead to a number of problems within the justice system, such as increased attention of the police, limited cultural sensitivity and understanding during the procedure and lack of attention on their own vulnerability and victimisation.

In order to prevent discrimination and promote integrative and needs-based intervention among ethnic minorities and immigrant youth, policies should take more effort into understanding the nature of the problems involving the target groups into the process. In the field of practice, police officers, prosecutors and judges should understand how these groups differ from the majority population and which specific strengths must be investigated and targeted by the intervention. With the help of careful legislative innovation and supportive practical approach a wide range of discriminative practices could be eliminated.

Specialisation and training

Appropriate training and specialisation of practitioners working directly or indirectly with children appears to be essential based on international documents in order to ensure that professionals have appropriate knowledge and experience in dealing with children and acting in their best interest. Education and training of the staff of justice institutions is focusing ideally to a wide range of questions from ethics and basic professional values, to developmental, social and educational consideration of deviant youth. Multiple states offer specialised higher education or training courses in the field, that are organised either by non-governmental or by governmental organisation. Beyond these courses learning in practice still dominates in the course of gaining the appropriate specialisation.

The requirement on specialisation extends to all institutions of justice from the police offices, prosecutors' offices and courts to special units of probation workers and detention staff. Although some states have taken important efforts to ensure that their legal and non-legal practitioners are well-prepared and well-trained, specialised units of institutions are not typical among the countries. Only Belgium and the Netherlands provide some extent of specialisation in the police level as well as in prosecutors' offices and courts, however in the

Netherlands the latter only refers to the specially assigned judges instead of a specialised institution. Most countries provide specialised staff at the court level, with the exception of Hungary and Finland. However, looking at the juvenile justice models they represent, this is not surprising, since neither the justice model nor the control model are characterised by specific attention on the needs of the subjects: mitigated measures respond to the lesser culpability. Interestingly, none of the countries in this study provide attorneys who are specialised to juvenile cases, which may be understood as a sign of Europe-wide deficiency in this respect.

VII.2.2. Juvenile justice systems in Central-Eastern Europe are similar in many ways following from the common historical roots, however their contemporary approach is rather dependent on the political will and the cooperation between justice and child protective institutions.

The common history of the Czech Republic, Hungary and Slovenia dates back to the time of the Austrian-Hungarian Empire. This period, the turn of the 19th and the 20th century, was important not only because of the partial political unity, but also because of the development of the scientific field of criminology and the establishment of juvenile justice systems in the countries of this area. The laws that were developed in this period had been in force until 1929 in Slovenia and until the 1950's in Hungary and the Czech Republic, and their heritage still lives in the contemporary legislation. After the Second World War a new era of legislative community began when all three countries became members of the Socialist Block and therefore were influenced by the Russian legislation. However, Slovenia, as a member state of Yugoslavia, turned away from the Soviet Union relatively early, when Tito confronted Stalin and began to question the mainstream repressive legislative solutions. After the political transitions in Hungary and the Czech Republic and the declaration of independence of Slovenia from the Republic of Yugoslavia, the independent countries ratified and implemented the UNCRC and began to develop their justice systems, including juvenile justice, without a dictate of major political influence from outside of the country.

My research was focusing on the developments since the transition years, and the main policy- and legislative choices the three countries made to develop their institutions in juvenile justice. I examined the previously established key questions in the European Union (see Chapter III) in a slightly different structure than I did in Chapter V, with regard to the comparative possibilities and the legislative peculiarities in these three countries. Interestingly, MACR and the question of age limits appear to be the most significant legislative questions in this area. While the Czech Republic set MACR in a higher age (15), Hungary lowered it in case of serious violent offences (12), while Slovenia applies a supplementary minimum age of deprivation of liberty (16) apart from the general MACR of 14 years. These age limits tell already a lot about the approach to juvenile delinquency in the three countries: While Slovenia kept his legislation corresponding to the lenient Yugoslavian traditions, the Czech Republic aimed to shape the legislation towards a more welfare-oriented approach. As opposed to the other two countries, Hungary recently implemented an expressly repressive policy against juvenile (child) offenders, and adopted a new Penal Code that underpins these efforts.

Apart from the question of age limits, there are a number of other factors that show the orientation of the system. Considering the common characteristics of the Central European juvenile justice systems and their development in the past 20 years I found the following factors the most relevant to Central European countries:

- the perception of minor delinquency;
- the specialization and relevant knowledge of the judicial authorities as a guarantee of due and child-friendly process;
- the actual sentencing practice in juvenile cases.

Minor delinquency was traditionally not dealt with by the criminal justice system in Central Europe, with regard to the lack of its "harmfulness in the society". Instead, a new kind of administrative offence has been created that allowed public authorities to impose fines in those cases where a fine was appropriate to retain delinquents from committing further offences. This system still exists in Hungary and Slovenia, while in the Czech Republic this distinction was abolished and replaced by procedural diversion. The purpose of this legislative solution was to prevent stigmatisation, unnecessary punishment and criminal records of those who have committed only non-violent, minor offences. This approach seems to be disregarded in the Hungarian system as of 2010, where juveniles (14-17 year olds) may receive short term confinement for committing such an offence. Minor offences that are considered under the criminal law are regarded similarly in all countries, at least on the level of legislative solutions. Both conditional and unconditional dismissals are possible in all three countries, although the extent of applicable conditions is different. The three countries show similarities in their approach to restorative practices within the (juvenile) justice system as well. Diversion by the prosecutor is possible in each country, corresponding to the international requirements, however it is rarely used, similarly to mediation.

The basic guarantees of due process and child-friendly justice are not yet fully implemented in the juvenile justice systems of Hungary and the Czech Republic. Guarantees such as the compulsory closed hearing, involvement of parents and institutions of social protection and the separation from adult cases are not yet implemented. Slovenia, in contrary to the other two countries, provides a broad range of guarantees for juvenile offenders. The three countries show similarities in particular in the shortcomings of institutional specialization and training within the law enforcement and judicial authorities, however, their strategies to deal with this situation are significantly different. Police officers are rarely specialized in juvenile cases with some exceptions of child-friendly interrogation methods, and prosecutors are typically also dealing with a variety of cases apart from their juvenile cases. Separate courts have not been established for juvenile cases in these countries: judges work within the general jurisdiction appointed to deal with juvenile cases. Although the judges appointed to juvenile cases are often referred to as "specialized" staff, this only refers to the fact of appointment and maybe the focus on juvenile cases during the judicial training. In the Czech Republic juvenile judges are obliged to examine the juvenile's personal and family environment which implies close cooperation with professionals of child protection and probation. In Slovenia it is prohibited to apply imprisonment below the age of 16, therefore the juvenile judges are forced to find an alternative that suits the best to the child's needs and responds to the gravity of the offence appropriately. The big proportion of educational measures at court level may be perceived as a positive outcome of this strategy. In

Hungary the lack of specialization is not yet balanced with any particular strategy, although judges in practice tend to call for specialization and training of judges who are assigned to juvenile cases (Vaskuti, 2015).

Concerning the above described differences in approach, it is not surprising that the three countries apply different interventions in practice. In Slovenia the practice appears to be relatively lenient towards juvenile offenders, underpinning the idea that juvenile delinquency is seen here as youthful indiscretion. The majority of juvenile offenders receive educational measure, while deprivation of liberty and in particular imprisonment of juveniles is rarely applied. The imprisonment rate is also relatively low in the Czech Republic, where the ultima ratio character of this sentence is set in the law. Although this approach is excellent, the fact that half of the actual juvenile sentences are still suspended imprisonment sentences shows the lack of knowledge on alternatives at the court level, as well as the lack of willingness to apply forward-looking and need-based intervention. The same sceptical approach may be observed at the Hungarian courts as well. While intervention on prosecutorial level happens even more rarely than in the Czech Republic, judges persist to impose traditional sanctions, such as imprisonment, suspended sentences or apply probation rather than imposing community work or restorative alternatives. In the Hungarian sentencing practice this approach leads to a relatively common imposition of deprivation of liberty, and the absolute primacy of suspended imprisonment among the alternative sanctions.

I was interested if tendencies in juvenile delinquency justify the difference in the build-up and policies in juvenile justice. Based on the data of the European Sourcebook (2010) the difference between the numbers of registered offences in the three countries is so little, that it makes it seem rather irrelevant (considering that the Czech Republic registers offenders only from the age 15, while Hungary and Slovenia registered them from 14). The most juvenile suspects are registered in Hungary. Based on the ISRD study (Junger-Tas, 2012) the non-criminal or latent deviant behaviour of adolescent youth shows further similarities. Hungary and the Czech Republic are in a leading position among other European countries in the field of substance abuse, compared to Slovenian data, which shows moderate alcohol and drug consumptions. Apart from this particularity, Central European countries show similarly moderate self-reported crime rates both in property and violent offences compared to the Western European countries, with little difference between the countries.

In conclusion, I found that although in comparison to Western European countries, the juvenile justice systems of Central Europe show important similarities in their legal construction and the stage implementation of certain international standards, they are genuinely different in their approach. The Slovenian system is rather non-interventionist aiming to avoid unnecessary control, stigmatization and causing harm in the juvenile's life. The Czech Republic developed a system that corresponds best to the modified justice model that builds welfare-elements into the justice system aiming to reflect to the needs of the child and serve his best interest. Hungary, as mentioned earlier, provides an example to the crime control model that seemingly avoids the consideration of a number of children's rights requirements and aims to prevent criminality through repression and control.

VII. 3. Policy implications regarding to the improvement of the Hungarian juvenile justice system

In the previous Chapters of this doctoral thesis the characteristics of the six models of juvenile justice systems of Europe have been described and analysed from the point of view of developmental research and international children's rights. Special attention was given to the countries of Central Europe and the state of implementation of children's rights within their systems. Through the comparative perspective, this study aimed to provide meaningful and useful reading about juvenile justice systems in Europe in order to encourage theoretical and field professionals to broaden their views on the possibilities in the field of juvenile justice. Examples on the legal and practical experiences of other countries were provided to introduce alternatives to the professional mindset and to draw attention to the good practices and failures of other countries. Based on the analytical results of this study a number of conclusions have been drawn regarding to the systems that are assigned to deal with youth criminality. As a closure, this subchapter aims to apply the above experiences to formulate policy implications for the national legislative body and institutions of juvenile justice in Hungary following international standards.

1. *Based on the international regulation reinstating the minimum age of criminal responsibility to 14 years, without providing exceptions in the regulation, would ensure the better correspondence with children's rights*. As mentioned in subchapter VII.2.1, MACR shall be understood as a minimum guarantee for all children, implying that no child under the specific age is able to commit a crime in the eyes of the law. Beyond being an important international requirement, the ultimate age limit is also an important element in creating clear legal basis for the juvenile justice system. Instead of creating a relatively flexible minimum age limit, individualisation of the sanction can be supported by the following practices:
    a) Creating a wide range of alternatives to deprivation of liberty, including intervention programmes that are designed to deal with specific problem of a given age group;
    b) Close co-operation between the police, the prosecutor and the child protection authority in applying diversion from the justice procedure as well as determining the best interests of the child;
    c) Making sure that prosecutors and judges have appropriate knowledge about the juvenile's individual characteristics and personal circumstances in order to make decision about the appropriate intervention;

2. *The establishment of an independent youth court system and a specialized body to juvenile prosecution would be beneficial both for the engagement of professionals and for children in conflict with the law*. In order to ensure the necessary specialisation and appropriate training of juvenile judges, youth court system supported by specialised prosecutors seems to be the best institution to deal with juvenile offenders. Such a court may also be appointed to deal with family law and child protection cases, such as the Youth Court in Belgium, and may also be able to deal with minor and petty

cases of juveniles. The total separation from the adult court system would make it possible to state special educational requirements for future juvenile judges (e.g. Master degree in juvenile justice or family law), and to provide senzitisation to children's problems and their views on life events as well as relevant theoretical and practical training to the court personnel throughout their careers. A separate location of the court could provide a good opportunity to design child-friendly courtrooms, where partnership and support is emphasized instead of authority.

3. *Limiting the legal opportunity of judges to apply deprivation of liberty for juveniles, especially for younger juveniles, would encourage both the judges and the legislator to seek alternatives to detention and apply these as a response to youth criminality*. Legislative solutions, for example the establishment of a minimum age of deprivation of liberty or the limitation of deprivation of liberty to reformatory institutions for juvenile offenders under the age of 16 could lead to multiple desirable consequences in juvenile sentencing. First of all, this would ensure that juvenile offenders are not incarcerated at a young age, and they do not have to suffer from the negative consequences of detention. Second, beyond limiting the use of deprivation of liberty this would force judges to set aside the practice of imposing suspended imprisonment sentences, and consider other appropriate alternatives. The most effective implementation of such a new regulation would require providing alternative measures and a variety of methodologies that allow individualization of sentences, as well as the appropriate training of judges on how to select the best alternative. I believe that both the reduction of the prison population and the improvement of the alternative measures lie in the legislation, which must create a very new and challenging situation for legal professionals.

4. *Placing probation of juvenile offenders into the child protection system could be an important step towards a juvenile justice system with a needs-based approach*. The Justice Office in Hungary organizes probation for juvenile offenders. This institution is appointed to provide probation supervision for both adults and juveniles, to organize justice mediation, to provide support to victims of crime, and to offer other legal and financial support in justice cases. Juvenile offenders represent a very special subgroup within the target population of probation services, with special needs both in terms of legal requirements (there are special laws applicable to juvenile offenders, e.g. about education or child protection), and emotional and physical needs (e.g. behavioural problems following from the increased impulsiveness in adolescence, increased dependency on the family). These are factors placing the methodology of support of juvenile offenders to the border of child protection and the justice system.

   During my research I have seen examples to juvenile probation that was organized by child protection authorities. In Slovenia, Social Services served as both child protection and probation services, although they reported neglecting their probation tasks due to lack of capacity. In the Netherlands, probation is organised by local child protection authorities, which provides the opportunity to combine family-support with the justice-related support. In Belgium, supervisory measures are

organised within the child protection system, where multiple relevant actors may be appointed as supervisors of the child. In England, YOTs are responsible for fulfilling supervisory tasks, and young people are only placed under the supervision of a probation worker at the age of 18. These countries provide examples of the efforts to include of child protective specialisation to the justice measure in order to provide child-centred and needs-based support instead of a control-oriented justice-intervention.

In the case of Hungary, the transfer of juvenile probation to the child protection system would create an environment where the above mentioned "children first, offenders second" philosophy could prevail. Probation workers who operate as part of the agency of social support would be able to cooperate with other actors of the welfare system in order to investigate the needs of the child and act in his best interest. They would also receive input about the situation and problems of average adolescent children and have a broader view of the target group. I believe that the institutional reform would help the control-based Hungarian system to take a step towards the more welfare-oriented models of juvenile justice systems and it would create the opportunity to refresh existing set of methodologies and institutions. In the institutional setting that aims to support children these changes would ideally be guided by children's rights.

REFERENCES

ABRAMSON, Bruce (2006). Juvenile Justice: The 'Unwanted Child'. Why the potential of the Convention on the Rights of the Child is Not Being Realized and What We Can Do About It. In JENSEN, Eric, & JEPSEN, Jørgen (Eds.). *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems* (15-38). Oregon: Hart Publishing.

AEBI, Marcelo Fernando, AUBUSSON DE CAVARLAY, Bruno, BARCLAY, Gordon, GRUSZCZYŃSKA, Beata, HARRENDORF, Stefan, HYSI, Vasilika, HEISKANEN, Markku, JEHLE, Jörg – Martin, KILLIAS, Martin, SMIT, Paul, JAQUIER, Véronique, SHOSTKO, Olena & ÞÓRISDÓTTIR, Rannveig (2010). *European Sourcebook of Crime and Criminal Justice Statistics – 2010*. Fourth *Edition.* Retrieved from http://www.europeansourcebook.org/ (17/9/2016)

AINSWORTH, Mary D. (1979). Infant-Mother Attachment. *American Psychologist*, 34 (10), 932-937.

Alapvető Jogok Országgyűlési Biztosa (2013). Gyermekközpontú Igazságszolgáltatás. AJB Projektfüzetek, 2013/1(14/11/2015)

Alapvető Jogok Országgyűlési Biztosa (2015a). Az alapvető jogok biztosa mint OPCAT nemzeti megelőző mechanizmus Jelentése az AJB - 1423/2015. számú ügyben. Retrieved from http://www.ajbh.hu/documents/10180/1957691/Jelent%C3%A9s+a+T%C3%B6k%C3%B6li+Fiatalkor%C3%BAak+B%C3%B6rt%C3%B6n%C3%A9nek+OPCAT+l%C3%A1togat%C3%A1s%C3%A1r%C3%B3l+1423_2015/580f8b36-ee2a-4a75-a247-f3e0a0c42055?version=1.0 (14/11/2015)

Alapvető Jogok Országgyűlési Biztosa (2015b). A szigetvári speciális gyermekotthon működésével kapcsolatos hiányosságokról. Retrieved from https://www.ajbh.hu/-/a-szigetvari-specialis-gyermekotthon-mukodesevel-kapcsolatos-hianyossagokrol?redirect=https%3A%2F%2Fwww.ajbh.hu%2Fkozlemenyek%3Fp_p_id%3D3%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26_3_groupId%3D0%26_3_keywords%3Dgyermekotthon%26_3_struts_action%3D%252Fsearch%252Fsearch%26_3_redirect%3D%252Fkozlemenyek%253Bjsessionid%253DA8913D622568480316D316DF5CB51419. (14/06/2016)

ALINK, L.R.A., CICCHETTI, D., KIM, J., & ROGOSCH, F.A. (2012). Longitudinal associations among child maltreatment, social functioning, and cortisol regulation. *Developmental Psychology*, 48, 224-236.

ALTAN, Levent (2013). Study on children's involvement in judicial proceedings Contextual Overview for the Criminal Justice Phase – England, Wales and Northern Ireland. European Commission. Retrieved from http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/United%20Kingdom%20(NI).pdf (17/9/2016)

ANGHEL, Roxana, HERCZOG, Maria, DIMA, Gabriela (2013). The challenge of reforming child protection in Eastern Europe: The cases of Hungary and Romania. *Psychosocial Intervention* 22, 239-249.

ARTHUR, Raymond (2004). *Punishing Parents for the Crimes of their Children*. Retrieved from http://www7.open.ac.uk/oubs/research/pdf/WP04_01.pdf (24/03/2014)

ARTHUR, Raymond (2012). Rethinking Criminal Responsibility of Young People in England and Wales. *Criminal Law and Criminal Justice*, 20, 13-29.

BALOGH Jenő (1909). *Fiatalkorúak és a büntetőjog.* Budapest: A Magyar Jogászegylet Könyvkiadó Vállalata.

BECK, Ulrich (1992). *Risk society*. London: Sage.

BEDE Márton (17 September 2014). *Kiszabadult a fiú akivel talán a legszemetebb volt a magyar állam* [On-line article]. Retrieved from http://444.hu/2014/09/17/kiszabadult-a-fiu-akivel-talan-a-legszemetebb-volt-a-magyar-allam/ (30/09/2014)

BENNETT, R.R. (2004). Comparative Criminology and Criminal Justice Research: The State of Our Knowledge. *Justice Quarterly*, 3, 21.

BEIJERSBERGEN, K.A., & WARTNA, B.S.J. (2007). *Recidivemeting Glen Mills.* Den Haag: WODC. Retrieved from http://www.wodc.nl/onderzoeksdatabase/recidive-onderzoek-glen-mills-school-gms.aspx (2014/01/10)

BELKNAP, J. & HOLSINGER, K. (2006). The genderednature of risk factors for delinquency. *Feminist Criminology,* 1, 48-71.

BERGER, Maartje (2012). Jeugdstrafrecht. In BLAAK, M., BRUNING, M., EIJGENRAAM, M., KAANDORP, M., MEEUWSE, S. (Eds.). *Handboek Internationaal Jeugdrecht* (820-920). Leiden: Defence for Children.

BESEMER Sytske, & FARRINGTON, David P. (2012). Intergenerational transmission of criminal behaviour: Conviction trajectories of fathers and their children. *European Journal of Criminology*, 9, 120-141.

BILJEVELD, Catrien C.J.H., & van der GEEST, Victor (2008). *Personal, background and treatment characteristics associated with offending after residential treatment: A 13-year follow up in adolescent males*. Psychology, Crime & Law, 4(2) 159-176.

BILJEVELD, Catrien C.J.H., van der GEEST, Victor, & HENDRIKS, Jan (2012). *Vulnerable Youth in Pathways to Adulthood.* In LOEBER, R., HOEVE, M., SLOT, N.W., & van der LAAN, P.H. (Eds.) *Persisters andDesisters on Crime from Adolescenve into Adulthood. Explanation, Prevention and Punishment* (105-126). Farnham: Ahsgate.

BLOKLAND, Arjan A. J. & NIEUWBEERTA, Paul (2005). The effects of life circumstances on longitudinal trajectories of offending. *Criminology*, 43(4), 1203-1240.

BLOKLAND, Arjan. A. J. & NIEUWBEERTA, Paul (2010). *Life Course Criminology*. In KNEPPER, Paul, KETT, Martin, SHOHAM, Giora Shlomo (2010). *International Handbook of Criminology* (51-94). USA: CRC Press.

BOLYKI Orsolya, GYŐRi Csaba. KEREZSI Klára & PARTI Katalin (2010). *Hungary*. In JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., &GRUSZCZYNSKA B. (Eds.). *Juvenile Delinquency in Europe and Beyond. Results ot the Second International Self-Reported Delinquency Study* (311-326). Dordrecht: Springer.

BORBÍRÓ Andrea (2004). Társadalmi bűnmegelőzés és emberi jogi követelmények. *Acta Humana*, 15 (4), 49-77.

BORBÍRÓ Andrea (2011). Kriminálpolitika és bűnmegelőzés a késő modernitásban (Doctoral dissertation). Manuscript. Department of Criminology, Eötvös Loránd University, Budapest.

BÜKI Péter (2001). Speciális szükségletű gyermekek a gyermekvédelmi szakellátórendszer intézményeiben. *Család, Gyermek, Ifjúság*, 10(4), 61-74.

BURIANEK, Jiri, PODANA, Zuzana (2010). *Czech Republic*. In JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., &GRUSZCZYNSKA B. (Eds.). *Juvenile Delinquency in Europe and Beyond. Results on the Second International Self-Reported Delinquency Study* (293-309). Dordrecht: Springer.

BURMAN, Michele, JOHNSTONE, Jenny, FRASER, Alastair, MCNEILL, Fergus (2010). Scotland. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (1149-1196). *Vol. 3*. Mönchengladbach: Forum Verlag Godesberg.

CASE, Stephen & HAINES, Kevin (2015). Risk management and early intervention: A critical analysis. In Goldson, B. & Muncie, J. (Eds.). Youth Crime and Justice. 2nd Edition (100-118). London: Sage.

CASPI, Avshalom, MCCLAY, Joseph, MOFFITT, Terrie E., MILL, Jonathan, MARTIN, Judy, CRAIG, Ian W., TAYLOR, Alan & POULTON, Richie (2002). Role of Genotype in the Cycle of Violence in Maltreated Children. *Science Magazine*, 297 (5582), 851-854.

CAVADINO, Michael, & DIGNAN, James (2006). *Penal Systems. A Comparative Approach*. London: Sage.

CAVADINO, Michael, DIGNAN, James, & MAIR, George (2013). *Penal Systems. An Introduction.* Fifth Edition. London: Sage.

Centers for Disease Control and Prevention: *Preventing Child Maltreatment Trough the Promotion of Safe, Stable and Nurturing Relationships Between Children and Caregivers.* Retrieved from http://www.cdc.gov/ViolencePrevention/index.html (10/04/2012)

Child Welfare Information Gateway: *Long-Term Cosequences of Child-Abuse and Neglect.* Retrieved from http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm (10/04/2012)

Children's Rights Alliance for England (2013). Speaking freely. Research Report. Retrieved from http://www.crae.org.uk/media/29853/speaking_freely_ending_violence_against_children_in_custody_european_research_report_condensed.pdf (15/11/2014)

Children's Rights International Network: *Making Children Criminals. Retrieved from* http://www.crin.org/docs/Stop_Making_Children_Criminals.pdf (11/08/2013)

CHRISTIAENS, Jenneke, DUMOTIER, Els, & NUYTIENS, An (2010). *Belgium.* In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments (99-130). Vol. 1*. Mönchengladbach: Forum Verlag Godesberg.

CHRISTIAENS, Jenneke & NUYTIENS, An (2009). Transfer of Juvenile Offenders to Adult Court in Belgium: Critical Reflections on the Reform of a Moderate Practice. *Youth Justice*, 9(2), 131–142.

COHEN, Albert K. (1955). *Delinquent Boys. The culture of the gang*. Glencoe, Illinois: The Free Press

CLEIREN, Tineke, CRIJNS, Jan, & VERPALEN, Rino (Eds.) (2014) *Strafrecht. Tekst & Commentaar*. De tekst van het Wetboek van Strafrecht en enkele aanverwante wetten. Wolters Kluwer.

COID, Jeremy W. (2003). Formulating strategies for the primary prevention of adult antisocial behaviour: "High risk" of "population" strategies? In FARRINGTON, D. P., &COID, J. W. (Eds.). *Early Prevention of Adult Antisocial Behaviour* (32-78). Cambridge: Cambridge University Press.

COLLINS, W. Andrew, & HARTUP, Willard W. (2013). History of Research in Developmental Psychology. ZELAZO, P. D. (Ed.): *The Oxford Handbook of Developmental Psychology, Vol. 1: Body and Mind.* Retrieved from http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199958450.001.0001/oxfordhb-9780199958450-e-2 (9/27/2015)

CORSARO, William. A. (2011). *Sociology of Childhood*. Califonia: Sage Publications.

CIPRIANI, Don (2009). *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*. Farnham: Ashgate Publishing Limited.

CROSS, Noel, EVANS, Jonathan & MINKERS, John. (2002). *Still Children First? Developements in Youth Justice in Wales*. Youth Justice, 2, 151.

Criminal Sanctions Agency of Finland (2013). Goals, values and principles. Retrieved from http://www.rikosseuraamus.fi/en/index/criminalsanctionsagency/goalsvaluesandprinciples.html (16/03/2016)

Criminal Sanctions Agency of Finland (2015). Statistics of the Criminal Sanctions Agency 2014. Retrieved from http://www.rikosseuraamus.fi/material/attachments/rise/julkaisut-tilastollinenvuosikirja/bCNzCZ22h/Statistical_Yearbook_2014_of_the_Criminal_Sanctions_Agency_korjattu.pdf (16/03/2016)

Criminal Sanctions Agency of Finland (2015b). Supervision of conditionally sentenced young offenders. Retrieved from http://www.rikosseuraamus.fi/en/index/sentences/communitysanctions/supervisionofconditionallysentencedyoungoffenders.html (16/03/2016)

Criminal Sanctions Agency of Finland (2015c). Fine. Retrieved from http://www.rikosseuraamus.fi/en/index/sentences/fine.html (16/03/2016)

CSÁSZÁR Katalin (2013). Study on children's involvement in judicial proceedings Contextual Overview for the Criminal Justice Phase – Hungary. European Commission. Retrieved from http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Hungary.pdf (17/9/2016)

CSEMÁNÉ VÁRADI Erika & LÉVAY Miklós (2002). A fiatalkorúak büntetőjogának kodifikációs kérdéseiről – történeti és jogösszehasonlító szempontból. *Büntetőjogi Kodifikáció*, I, 12-27.

CSEMÁNÉ VÁRADi Erika (2006). A gyermek – és fiatalkori bűnözés. In GÖNCZÖL K., KEREZSI K., KORINEK L. & LÉVAY M. (Eds.). *Kriminológia-szakkriminológia* (525-542). Budapest: Complex Kiadó.

CSEMÁNÉ VÁRADI Erika (2007). Új tendenciák a fiatalok bűnözésében - nemzetközi kitekintés. In Both E. & Deres P. (Ed.). *Kriminológia Közlemények 64* (200-231). Budapest: Magyar Kriminológiai Társaság

CSEMÁNÉ VÁRADI Erika (2009): Helyzetkép Magyarországon és a világban: kiskorú elkövetők és áldozatok. In BORBÍRÓ A., &KEREZSI K. (Eds.). *A krimálpolitika és a társadalmi bűnmegelőzés kézikönyve I.* (249-272). In http://bunmegelozes.easyhosting.hu/dok/tamop_tk_1_alt+gyfk.pdf (12/08/2013)

CSEMÁNÉ VÁRADI Erika (2010). Hungary. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., &PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments (671-719). Vol. 2*. Mönchengladbach: Forum Verlag Godesberg.

CSEMÁNÉ Dr. Váradi Erika. A Janus-arcú kriminálpolitika - avagy a fiatalkori bűnözéssel szembeni fellépés aktuális kérdései. Retrieved from http://www.uni-miskolc.hu/~wwwdeak/Collegium%20Doctorum%20Publikaciok/Csem%e1n%e9%20V%e1radi%20Erika.pdf (28/03/2016)

CURRIE, E. (2009). Social Crime Prevention strategies in a market society. In MCLAUGHLIN, E., MUNCIE J., HUGHES G. (Eds.). *Criminological Perspectives: Essential reading. Second Edition* (369-380). London: Sage.

CZÉDLI-DEÁK Andrea (2015). Adalékok a belátási képesség vizsgálatához. *Jogelméleti Szemle*, 4, 102-115.

D'HONDT, Sarah & PÉTERS, Catherine (2016). *Nationale kinderrechtenindicatoren. Make them count*. Nationale Commissie voor de Rechten van het Kind. Retrieved from https://1168.fedimbo.belgium.be/sites/1168.fedimbo.belgium.be/files/explorer/indicateurs/Publication_nl_def.pdf (05/03/2016)

DAMMER, H. R. & ALBANESE, J. S. (2013). *Comparative Criminal Justice Systems*. *Fifth Edition*. USA: Wadsworth.

Defence for Children the Netherlands (2014). Children's Rights Behind Bars. Human rights of children deprived of liberty: Improving monitoring mechanisms. National Report The Netherlands. Retrieved from http://www.childrensrightsbehindbars.eu/images/national-reports-2014/NETHERLANDS%20-FINAL%20REPORT.pdf (22/11/2015).

Defence for Children the Netherlands (2015). Juvenile Offenders Detention alternatives. National Report – The Netherlands. Retrieved from https://www.defenceforchildren.nl/images/70/3955.pdf (26/09/2016)

Defence for Children Belgium (2014). Children'e Rights Behind Bars. Human rights of children deprived of liberty: Improving monitoring mechanisms. National Report The Netherlands Retrieved from http://www.childrensrightsbehindbars.eu/images/national-reports-2014/BELGIUM%20-%20FINAL%20REPORT.pdf (22/11/2015)

DEHART, G. B., SROUFE, L. A., & COOPER R. G. (2004). *Child Development: Its Nature and Course. Fifth Edition.* New York: McGraw-Hill.

DEKLEVA, B. & RAZPOTNIK, S. (2010). Slovenia. In JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., &GRUSZCZYNSKA, B. (Eds.). *Juvenile Delinquency in Europe and Beyond. Results ot the Second International Self-Reported Delinquency Study*. Dordrecht: Springer.

DETRICK S., ABEL G., BERGER M., DELON A., & MEEK R. (2008). *Violence Against Children in Conflict with the Law.* Defence for Children.

DIGNAN, James (2010). England and Wales. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (357-398). *Vol. 1*. Mönchengladbach: Forum Verlag Godesberg.

van DIJK, J. J. M., & de WAARD, J. (1991). A two-dimensional typology of crime prevention projects: With a bibliography. *Criminal justice abstracts*, 483-503.

van DIJK, Catherine, DUMORTIER, Els. & ELIAERTS, Christian. (2008). Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice. In JUNGER-TAS, J., DECKER, S.H. (Eds.). *International Handbook of Juvenile Justice* (187-223). New York: Springer.

DOEK, Jaap E. (2008). Juvenile Justice: International Rights and Standards. In LOEBER, R., SLOT, N. W., van der LAAN, P., & HOEVE, M. (Eds.): T*omorrow´s Criminals. The Development of Child Delinquency and Effective Interventions* (229-246). Bodmin: Ashgate.

DOEK, Jaap E. (2009). The UN Convention on the Rights of the Child. In JUNGER-TAS, J., & DÜNKEL, F. (Eds.). *Reforming Juvenile Justice* (19-31). New York: Springer.

DROGRIPORTER (2011). Fogyasztoknak. Retrieved from http://drogriporter.hu/drogjog/fogyasztoknak (26/10/2014)

DRURY, S.S., THEALL, K., GLEASON, M.M., SMYKE, A. T., DE VIVO, I., WONG, J. Y. Y., FOX, N. A., ZEANAH, C.H., & NELSON, C. A. (2012). Telomere length and early severe social deprivation: linking early adversity and cellular aging. *Molecular Psychiatry* 17, 719–727.

DÜNKEL, Frieder (2009). Young People's Rights: The Role of the Council of Europe. In JUNGER-TAS, J., & DÜNKEL, F. (Eds.). *Reforming Juvenile Justice* (33-43). New York: Springer.

DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.) (2010). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments. Vol. 1-4.* Mönchengladbach: Forum Verlag Godesberg.

DÜNKEL, Frieder, PRUIN, Ineke, GRZYWA, Joanna (2010). Sanction systems and trends in the development of sentencing practices. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (1649-1716). *Vol. 3*. Mönchengladbach: Forum Verlag Godesberg.

DÜNKEL, Frieder, STANDO-KAWECKA, Barbara, (2010). Juvenile imprisonment and placement in institutions for deprivation of liberty. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (1789-1839). *Vol. 3*. Mönchengladbach: Forum Verlag Godesberg.

DÜNKEL, Frieder (2013). Youth Justice Policy in Europe - Between Minimum Intervention, Welfare and New Punitiveness. In DAEMS, T., VAN ZYL SMIT, D., SNACKEN, S. (Eds). *European Penology?* (145-170). Oxford: Hart Publishing.

DÜNKEL, F., HORSFIELD, P. & PĂROȘANU, A. (2015). Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States. Retrieved from http://www.ejjc.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf (21/03/2016)

DURKHEIM, Émile (2003). *Az öngyilkosság*. Budapest: Osiris Kiadó.

DURNESCU, Ioan (2011). Pains of Probation: Effective Practice and Human Rights. *International Journal of Offender Therapy and Comparative Criminology*. 55, 530-545.

ECCLES, J.S., ROESER, R. W. (2012). School Influences on Human Development. In MAYES, L.C., & LEWIS, M. (Eds). *The Cambridge Handbook of Environment in Human Development* (259-283). Cambridge: Cambridge University Press.

ECPAT International (2015). Regional Report. Europe and Central Asia. Manuscript.

ÉDER Mária (2000). *Gubancok és tettesek. A családi zavaroktól a bűnelkövetésig*. Budapets: Saxum.

ENGELS, Rutger T.M.E., & ter BOGT, T. (2001).Influences of Risk Behaviors on the Quality of Peer Relations in Adolescence. *Journal of Youth and Adolescence*, 30 (6), 675-695.

European Justice (2016). Organisation of justice – judicial systems. The Netherlands. Retrieved from https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-nl-en.do?member=1 (14/5/2016).

FARRINGTON, David P. (1990). Implications for the Criminal Career Research for the Prevention of Offending. *Journal of Adolescence*, 13(2), 93-113.

FARRINGTON, David P. (1992). Criminal Career Research in the United Kingdom. *British Journal of Criminology*, 32 (4), 521-536.

FARRINGTON, David P. (2000). Explaining and preventing crime: The globalization of knowledge - The American Society of Criminology, 1999 Presidential Address. *Criminology*, 38 (1), 1-24.

FARRINGTON, David P., & JUBY, Heather (2001). Disentangling the Link Between Disrupted Families and Delinquency. *British Journal of Criminology*, 41, 22-40.

FARRINGTON, David P. (2003a): Advancing Knowledge About the Early Prevention of Adult Antisocial Behaviour.In FARRINGTON, D. P., & COID, J. W. (Eds.). *Early Prevention of Adult Antisocial Behaviour* (1-31). Cambridge: Cambridge University Press.

FARRINGTON, David P. (2003b). Developmental and Life-course Criminology: Key Theoretical and Empirical Issues – the 2002 Sutherland Award Address. *Criminology*. Vol 41, 2, 221-255.

FARRINGTON, David P., & WELSH, Brandon C. (2003).Family-based Prevention of Offending: A Meta-analysis. *Australian & New Zealand Journal of Criminology*, 36, 127-151.

FARRINGTON, David P., & WELSH, Brandon (2007). *Saving Children from a Life of a Crime. Early Risk Factors and Effective Interventions*. London: Oxford.

FARRINTON, David P. (1992). *Criminal Career Research in the United Kingdom*. British Journal of Criminology. 32(4), 521-536.

FARRINGTON, David P., TTOFI, Maria M., & COID, Jeremy W. (2009). Development of Adolescence-Limited, Late-Onset, and Persistent Offenders From Age 8 to Age 48. *Aggressive Behaviour*, 35(2), 150-163.

FARRINGTON, David P., & WELSH, Brandon C. (2005). Evidence-Based Crime Prevention: Conclusions and Directions for a Safer Society. *Canadian Journal of Criminology and Criminal Justice*. 47(2), 337-354.

FARRINGTON, David P., & ZARA, Georgia (2010). A longitudinal analysis of early risk factors for adult-onset offending: What predicts a delayed criminal career?*Criminal Behaviour and Mental Health*, 20, 257-273.

FARRINGTON, David P. (2013). *Award winner lecture*. Stockholm Criminology Symposium, 2013. Presentation is retrieved from http://www.criminologysymposium.com/download/18.6b82726313f7b234a589df/1375878005836/TUE15+Farrington+David.pdf

FERWERDA, Henk B. (2002). Youth Crime and Juvenile Justice in the Netherlands. In WINTERDYK, J.A. (Ed.). *Juvenile Justice Systems: International Perspectives. Second Edition* (385-409). Toronto: Canadian Scholars Press.

FERWERDA, H.B., VAN LEIDEN, I.M.G.G., ARTS, N.A.M., & HAUBER, A.R. (2006). *Halt: Het Alternatief. De effecten van Halt beschreven.* Den Haag. Retrieved from http://wodc.nl/onderzoeksdatabase/praktijk-en-effecten-haltafdoening.aspx (10/01/2014)

FILIPČIČ, Katja (2004). Dealing with juvenile delinquents in Slovenia. *Revue internationale de droit pénal*, 1(75) 493-509.

FILIPČIČ, Katja (2006). Welfare Versus Neo-Liberalism: Juvenile Justice in Slovenia. In: JUNGER-TAS, J., DECKER, S.H. (Eds.). *International Handbook of Juvenile Justice* (397-414). New York: Springer.

FILIPČIČ, Katja (2009). Community Service – New Method of Correction of Juvenile Offenders in Slovenia. In MESKO, G., & KURY, H. (2009). *Crime Policy, Crime Control and Crime Prevention – Slovenian Perspectives* (203-230). Ljubljana: Tipografija Publishing.

FILIPČIČ, Katja (2010). Slovenia. In Dünkel, F., Grzywa, J., Horsfield, P., & Pruin, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (1263-1286). *Vol. 3*. Mönchengladbach: Forum Verlag Godesberg.

FILIPČIČ, Katja, & PRELIC, Danijela (2011). Deprivation of Liberty of Juvenile Offenders in Slovenia. *The Prison Journal*, 91, 448-466.

FILÓ Erika, & KATONÁNÉ PEHR Erika (2009): *Gyermeki jogok, gyermekvédelem*. Budapest: HVG – ORAC.

FOX, Lionel W. (1952). The English Prison and Borstal Systems. London: Routledge & Kegan Paul Limited.

GARCÍA, Jorge, L., HECKMAN, James J., LEAF, Duncan E., PRADOS, María José (2016). The Life-cycle Benefits of an Influential Early Childhood Programme. HCEO Working Paper Series 2016-035. Retrieved from

http://heckmanequation.org/content/resource/lifecycle-benefits-influential-early-childhood-program

GARLAND, David (2001). *Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: The University of Chicago Press.

GÁSPÁR Károly (2006). A gyermekvédelem és a fiatalkorúakra vonatkozó büntető-igazságszolgáltatás kapcsolódási pontjai, különös tekintettel a megelőzésre és a reszocializációra. *Család, Gyermek, Ifjúság* 15 (2),12-18.

GILBERT, Elli & MAHIEU, Valentine (2012). Onderzoek naar de beslissingen van jeugdrechters/jeugdrechtbanken inMOF-zaken. Eindrapport. Retrieved from https://nicc.fgov.be/de-beslissingen-van-jeugdrechters-en-jeugdrechtbanken-in-mof-zaken (06/03/2016)

GOLDSON, Barry (2000). 'Children in Need' or 'Young Offenders'? Hardening Ideology, Organizational Change and New Challenges for Social Work with Children in Trouble. *Child and Family Social Work*, 5, 255-265.

GOLDSON, Barry (2015). The circular motions of penal politics and the pervasive irrationalities of child imprisonment. In Goldson, B & Muncie, J (Eds.). *Youth Crime & Justice* (170-190). London: Sage.

GÖNCZÖL Katalin (1980) A visszaeső bűnelkövetők tipologizálása. Budapest: KJK.

GÖNCZÖL Katalin (1994). Devianciák, bűnözés, és a megelőzési stratégia. *Társadalmi Szemle*, 5, 40-54.

GÖNCZÖL Katalin, KEREZSI Klára, KORINEK László, & LÉVAY Miklós (2006). *Kriminológia-Szakkriminológia*. Budapest: CompLex.

GOTTFREDSON, M. R., & HIRSCHI, T. (1990). *A General Theory of Crime.* Stanford, California: Stanford University Press.

GRAHAM, John & MOORE, Colleen (2006). Beyond Welfare Versus Justice: Juvenile Justice in England and Wales. In JUNGER-TAS, J. and DECKER, H. S. (Eds.). *International Handbook of Juvenile Justice* (65–92). Springer.

GRANATH, S., HAGSTEDT, J., KIVIVUORI, J., GANPAT, S., NIEUWBERTA, P., LIEM, M., & LEHTI, M. (2011). *Homicide in Finland, the Netherlands and Sweden. The First Study on the European Homicide Monitor Data.* Retrievd from http://www.bra.se/download/18.656e38431321e85c24d80007748/1330943480501/2011_15_homicide_finland_netherlands_sweden.pdf (20/09/2013)

GREENWOOD, Peter (2008). Prevention and Intervention Programmes for Juvenile Offenders. *The Future of Children*, 18(2), 185-210.

GYURKÓ SZILVIA (2008). *A szülői ház fegyelmezési jogától a gyermek testi fenyítésének tilalmáig*. Belügyi Szemle, 53 (9), 93-103.

GYURKÓ Szilvia, & HERZOG Mária (2008). *A gyermekkor határának kérdése*. Rendészeti Szemle, 56(7-8), 72-78.

GYURKÓ Szilvia, & FEHÉR Lenke (2008). A *büntethetőségi korhatár felülvizsgálatának indokoltsága. A nem büntethető gyermekkorúak tényállásszerű cselekményeinek értékelése és kezelőrendszerének sajátosságai*. Budapest: OKRI.

GYURKÓ Szilvia, & VIRÁG György (2009). *Az iskolai erôszak megítélésének különbségei és hasonlóságai a gyermekvédelmi és az oktatási intézményrendszerben*. [Final report] Retrieved from http://www.fovpi.hu/data/cms54533/agresszio_zaro.pdf (17/9/2016)

HAGELSTAM, C., & HÄKKÄNEN, H. (2005). Adolescent Homicides in Finland: Offence and Offender Characteristics. *Forensic Science International,* 2-3, 110-115.

HALMOSNÉ SIKET Zsuzsanna (2015). A büntethetőségi korhatár leszállításának okai. *Jogelméleti Szemle*, 4, 116-125.

HAMMARBERG, T. (2010). *Human Rights in Europe. No Grounds for Complacency.* Council of Europe Publishing. Retrieved from http://www.coe.int/t/commissioner/Viewpoints/ISBN2011_en.pdf(10/08/2013).

HARRIKARI, T. (2011). *The Making of the First Child Welfare and Juvenile Crime Acts in Finland 1897-1943*. Social Work and Society, 9 (2). Retrieved from http://www.socwork.net/sws/article/view/268/443 (23/03/2014)

HART, Sybil L. (2012). Siblings and Peers in the Adult-Child-Child Tridic Context. In MAYES, L.C., &LEWIS, M. (Eds). *The Cambridge Handbook of Environment in Human Development* (259-283). Cambridge: Cambridge University Press.

HAZEL, Neil (2008). *Cross-national comparison of youth justice*. Retrieved from http://www.academia.edu/1621782/Cross-national_comparison_of_youth_justice (22/03/2014)

HEARN, J., PÖSÖ, T., SMITH, C., WHITE, S., & KORPINEN, J. (2004). What is child protection? Historical and methodological issues in comparative research on lastensuojelu/childprotection.*International Journal of Social Welfare*, 13, 28-41.

HEIDE, K. M., PETEE, T. A. (2007). Parricide: an empirical analysis of 24 years of U.S. data. *Journal of Interpersonal Violence, 22*, 1382-1399.

Heikki Waris Institute: *Materials of practice research*. The Centre of Excellence on Social Welfare in the Helsinki Metropolitan Area. Retrieved from http://www.socca.fi/in_english/materials_of_practice_research (17/09/2016)

HENDRIKSEN-FAVIER, Annemieke, PLACE, Caroline & VAN WEZEP, Manja (2010). *Procesevaluatie van YOUTURN: instroomprogramma en stabilisatie- en motivatieperiode*. Retrieved from https://www.wodc.nl/onderzoeksdatabase/de-nieuwe-basismethodiek-van-de-jjis.aspx (02/06/2016).

HERCZOG Mária, & HAZAI Vera (1994). *A gyermekvédelem nemzetközi gyakorlata*. Budapest: Pont Kiadó.

HERCZOG, M., & Irk, F. (2002). *Comparative Juvenile Justice: An overview of Hungary*. In WINTERDYK, J.A. (Ed.). *Juvenile Justice Systems: International Perspectives. Second Edition* (235-264). Toronto: Canadian Scholars Press.

HERCZOG Mária (2005). *Gyermekvédelmi kézikönyv*. Budapest: KJK-Kerszöv.

HERCZOG Mária (2008). Gyerek elkövetők, felnőtt bűnök. *Család, Gyermek, Ifjúság*, 17 (3), 4-10.

HERCZOG Mária (2008) Nincsenek csodák: a gyermekkori bűnelkövetés megelőzéséről és kezeléséről.*Fundamentum*, 12 (2), 79-88.

HERCZOG Mária [Ed.] (2009a). Kézikönyv a gyermekjogi egyezmény alkalmazásához. Budapest: *Család, Gyermek, Ifjúság Egyesület.*

HERCZOG Mária (2009b). Intézményi erőszak és rendszerabúzus. In BORBÍRÓ A., KEREZSI K. (Eds.). *A krimálpolitika és a társadalmi bűnmegelőzés kézikönyve I.* (347-360). Retrieved from http://bunmegelozes.easyhosting.hu/dok/tamop_tk_1_alt+gyfk.pdf (12/08/2013)

HILHORST, N., & KLOOSTER, E. (2004). Programma-evaluatie van de Glenn Mills School. Amsterdam: WODC. Retrieved from http://wodc.nl/onderzoeksdatabase/evaluatie-glen-mills-school.aspx (10/01/2014)

HOOGENDOORN, K., HILVERDINK P., & DARWISH, L. (2012). I*ncluding all children and young people. Movin towards a positive approach in youth policy in the Netherlands.* Nederlands Jeugd Instituut. Retrieved from http://www.youthpolicy.nl/yp/downloadsyp/downloadsyp-Including-all-children-and-young-people.pdf (17/09/2016)

Home Office: Respect and Resposibility, 2003. Retrieved from http://www.archive2.official-documents.co.uk/document/cm57/5778/5778.pdf (24/03/2012)

Home Office (2013). Anti-social Behaviour, Crime and Policing Bill. European Convention on Human rights. Memorandum. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197637/ECHRmemoCommonsIntroduction.pdf (13/03.2016)

Home Office (2014). Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf (12/03/2016)

HONKATUKIA, Päivi, NYQUIST, Leo, & PÖSÖ, Tarja (2003). Sensitive Issues in Vulnerable Conditions. Studying Violence in Youth Residential Care. *Nordic Journal of Youth Research*, 11(4), 323-339.

HONKATUKIA, Päivi, NYQUIST, Leo, & PÖSÖ, Tarja (2006).Violence from withing the Reform School. *Youth Violence and Juvenile Justice.* 4 (4), 328-344.

HONKATUKIA, Päivi, NYQUIST, Leo, & PÖSÖ, Tarja (2007). Violence Talk and Gender in Youth Residential Care. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 8, 56–76.

HOWARD K.S. & BROOKS-GUNN J. (2009). *The Role of the Home-visiting Programs in Preventing Child Abuse and Neglect*. Future of Children, 19(2) 119–146.

HOWEL, James C. (2001). Juvenile Justice Programs and Strategies. IN LOEBER, R., FARRINGTON, D. P.: *Child Delinquents: Development, Intervetnion and Service Needs*. USA: Sage.

JAFFEE, S.R., CASPI, A., MOFFITT, T.E., POLO-TOMÁS, M., & TAYLOR, A. (2007). Individual, family, and neighborhood factors distinguish resilient from non-resilient maltreated children: A cumulative stressors model. *Child Abuse & Neglect,* 31, 231–253.

JENSEN, Eric, & JEPSEN, Jørgen (Eds.) (2006). *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems*. Oregon: Hart Publishing.

JOHNSON, Susan C., DWECK, Carol S., CHEN, Frances S., STERN, Hilarie L., OK, Su-Jeong, & BARTH, Maria (2010). At the Intersection of Social and Cognitive Development: Internal Working Models of Attachment in Infancy. *Cognitive Science*, 34, 807–825.

JOLLIFFE, D., & FARRINGTON, D. P. (2008). *The Influence of Mentoring on Reoffending*. Stockholm: Swedish National Council of Crime Prevention

JOUTSEN, Matti, LAHTI, Raimo, & PÖLÖNEN, Pasi (2001). Criminal Justice Systems in Europe and North America.Finland. Helsinki: HEUNI. Retrieved from http://www.heuni.fi/uploads/mw1ahyuvuylrx.pdf (17/06/2012)

JUBY, Heather & FARRINGTON, David P. (2001). Disentangling the link between disrupted families and delinquency. *British Journal of Criminology*, 41, 22-40.

JUFFER, F. (2010). *Beslissingen over kinderen in problematische opvoedingssituaties.* Rechtspraak Research Memoranda, 6/6.

JUNG, C.G. (2008). *A személyiség fejlődése*. Budapest: Scolar Kiadó.

JUNGER-TAS, Josine (1994). Will the Juvenile Justice System Survive?*European Journal on Criminal Policy and Research*, 2, 76-91.

JUNGER-TAS, Josine (2001). Ethnic minorities, social integration and crime. *European Journal on Criminal Policy and Research,* 9, 5-29.

JUNGER-TAS, Josine (2012). Delinquent Behaviour in 30 Countries. In JUNGER-TAS, Josine, HAEN MARSHALL, Ineke, ENZMANN, Dirk, KILLIAS, Martin, STEKETEE, Majone, GRUSZCZYNSKA, Beata (Eds.). *The Many Faces of Youth Crime* (3-20). New York: Springer.

JUNGER-TAS, J., DECKER, S.H. (Eds.) (2008): *International Handbook of Juvenile Justice*. New York: Springer.

JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., &GRUSZCZYNSKA B. (2010). History and design of the ISRD Studies. In JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., &GRUSZCZYNSKA (Eds.). *Juvenile Delinquency in Europe and Beyond. Results ot the Second International Self-Reported Delinquency Study* (1-12). Dordrecht: Springer.

JUNGER-TAS, J., STEKETEE, M., &MOLL, M. (2010). The Netherlands. In JUNGER-TAS, J., MARSHALL, I. H., ENZMANN, D., KILLIAS, M., STEKETEE, M., & GRUSZCZYNSKA (Eds.). *Juvenile Delinquency in Europe and Beyond. Results ot the Second International Self-Reported Delinquency Study* (13-28). Dordrecht: Springer.

JUNGER-TAS, Josine (2012). Delinquent Behaviour in 30 Countries. In JUNGER-TAS, Josine, HAEN MARSHALL, Ineke, ENZMANN, Dirk, KILLIAS, Martin, STEKETEE, Majone, GRUSZCZYNSKA, Beata (Eds.). *The Many Faces of Youth Crime* (3-20). New York: Springer.

International Center for Prison Studies. World Prison Brief. Retrieved from http://www.prisonstudies.org/map/europe (15/11/2014).

VAN KALMTHOUT, A.M., & BAHTIYAR, Z. (2010). The Netherlands. DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.) (2010). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments. Vol. 3* (911- 956). Mönchengladbach: Forum Verlag Godesberg.

KAPA-CZENCZER Orsolya (2008). Fiatalkorúak reszocializációs nevelése a szabadságvesztés büntetés alatt. (Doktori disszertacio) Retrieved from http://193.224.191.196:8080/phd/Dr.KapaCzenczerOrsolya_PhD_dolgozat.pdf (17/09/2016)

KARABEC, Zdenek, DIBLIKOVA, Simona, VLACH, Jiří & ZEMAN, Petr (2011). *Criminal Justice System in the Czech Republic*. Institute of Criminology and Social Prevention: Prague. Retrieved from http://www.ok.cz/iksp/docs/386.pdf (15/07/2017)

KÄRNÄ, Antti, LITTLE, Todd D., VOETEN, Marinus, POSKIPARTA, Elisa, KALJONEN, Anne, & SALMIVALLI, Christina (2011). A Large-Scale Evaluation of the KiVa Antibullying Program: Grades 4–6. *Child Development*, 82(1), 311–330.

KATONÁNÉ PEHR Erika (2008): A gyermekkorú elkövetőkkel való bánásmód gyermekvédelmi intézményei, gyermekkorú elkövetők a gyermekvédelemben.Kriminológiai Közlemények 65, 19-37.

KEREZSI Klára (1990). A pártfogás dilemmája: kontroll vagy segítő kapcsolat.*Esély*, 2(5), 54-65.

KEREZSI Klára (1997). A fiatalkori bűnözés kezelése és megelőzésének lehetőségei.*Belügyi Szemle*, 45(10) 7-13.

KEREZSI Klára (2007). A javítóintézeti nevelés helye a fiatalkorúak büntető igazságszolgáltatási rendszerében. Kriminológia Közlemények 64, 25-46.

KEREZSI Klára, PARTI Katalin, GYŐRY Csaba, SÜKI-SZIJJÁRTÓ Szilvia Ágnes, & BOLYKI Orsolya (2008). Látens fiatalkori devianciák - ahogy ők látják (Az önbevalláson alapuló nemzetközi összehasonlító vizsgálat magyar blokkja). [Project report] Budapest: OTKA. Retrieved from http://real.mtak.hu/2056/1/60981_ZJ1.pdf (17/09/2016)

KEREZSI, K., & LÉVAY M. (2008). Criminology, Crime and Criminal Justice in Hungary. *European Journal of Criminology*, 5(2), 239-260.

KEREZSI K., & KÓ J. (2013). Normasértés vagy jogkövetés. Fiatalkorú fiúk kriminológiai vizsgálata. OTKA K 81615. [Project report] Budapest: OKRI.

KERTÉSZ Bence (2008). A felelőssé válás – Kutatás egy elit gimnáziumban. *Kriminológia Közlemények,* 65, 51-61.

KEMSHALL, Hazel (2003). *Understanding risk in criminal justice*. Berkshire: Open University Press.

KIRÁLY TIBOR (2008). *Büntetőeljárási jog*. Budapest: Osiris Kiadó.

KILLIAS M., REDONDO, S., & SARNECZKI J. (2012). European Perspectives. In LOEBER, R., HOEVE, M., SLOT N.W., & van der LAAN, P. (Eds.). *Persisters and Desisters in Crime from Adolescence into Adulthood* (291-334). Surrey: Ashgate.

KIVIVUORI, Janne, LEHTI, Martti, & AALTONEN, Mikko (2007): *Homicide in Finland, 2002–2006*. National Research Institute of Legal Policy, Finland.

KOMEN, Mieke & VAN SCHOOTEN, Erik (2009). Ethnic Disparities in Dutch JuvenileJustice, *Journal of Ethnicity in Criminal Justice*, 7(2), 85-106.

KORINEK László (2006). A kriminológia tudományának létrejötte. In GÖNCZÖL K., KEREZSI K., KORINEK L., & LÉVAY M. (Eds.). *Kriminológia – Szakkriminológia*. Budapest: CompLex.

KOVÁCS, Krisztina (2013). Fiatalkorú bűnelkövetők reszocializációs nevelése. Speciálpreventív beavatkozások a szabadságvesztés alatt és azt követően. *De iurisprudentia et iure publico.* VII(2). Retrieved from http://dieip.hu/wp-content/uploads/2013-2-11.pdf (28/03/2016)

KŐHALMI László (2013). A büntethetőségi korhatár kérdése. *Jogelméleti Szemle*, 1, 82-95.

KSH: *2.4.12.* A gyermekvédelmi szakellátásban részesülő fiatalok korcsoportok szerint (1990–) Retrieved from http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsg001.html (20/01/2013)

VAN DER LAAN, A.M., KEA, R., VERWERS, C., & VERVOORN, L. (2009). De Stop-reactie. Een procesevaluatie. Retrieved from https://www.wodc.nl/onderzoeksdatabase/procesevaluatie-van-de-stop-reactie.aspx (12/2/2016)

VAN DER LAAN, André M. & EICHELSHEIM, Veroni (2013). Juvenile adaptation to imprisonment: Feelings of safety, autonomy and well-being, and behaviour in prison.*European Journal of Criminology*, 10, 424- 443.

VAN DER LAAN, Peter H. (2008). Just Desert and Welfare: Juvenile Justice in the Netherlands. In JUNGER-TAS, J., & DECKER, S.H. (Eds.) *International Handbook of Juvenile Justice* (153-172). New York: Springer.

VAN DER LAAN, P., HOEVE, M., & VAN DOMBURGH, L. (2008). Child Delinquency as Seen by Children, the Police and the Justice System. In LOEBER, R., SLOT, N. W., VAN DER LAAN, P., & HOEVE, M. (Eds.). *Tomorrow's Criminals. The Development of Child Delinquency and Effective Interventions* (21-34). Bodmin: Ashgate.

VAN DER LAAN, Peter H., VAN DER LAAN, André M., HOEVE, Machteld, BLOM, MARTINE, LAMET WILLEMIJN H. & LOEBER, Rolf (2012). Offending and Justice Response at the Juvenile-Adult Interface. In LOEBER, R., SLOT, N. W., VAN DER LAAN, P., &HOEVE, M. (Eds.). *Persisters and Desisters in Crime from Adolescence into Adulthood.* (201-238). Farnham: Ashgate.

LAMB, M.E., RAJECZKI, D. W., & OMBASCHER, P. (1978). Toward a General Theory of Infantile Attachment: a Comparative Review of Aspects of the Social Bond. *The Behavioral and Brain Sciences*, 3, 417-164.

LAUB, John H. (2011). The Developement of Criminals: Life Course Theories. In Lilly, j. R., Cullen, F. T., Ball, R. A. (Eds.) *Criminological Theory. Context and Consequences* (384-417). USA: Sage.

LAPPI-SEPPÄLÄ, Tapio (2008). *Trust, Welfare, and Political Economy.Explaining Differences in Penal Severity.* In TONRY, M. (Ed.). *Crime and Justice: A Review of Research* (313-387). Chicago: The University of Chicago Press.

LAPPI-SEPPÄLÄ, Tapio (2010). Finland. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments. Vol. 1.* (423-481). Mönchengladbach: Forum Verlag Godesberg.

LAPPI-SEPPÄLÄ, Tapio (2011). Nordic Youth Justice. *Crime and Justice*, 40(1), 199-264.

LAPPI-SEPPÄLÄ, TAPIO (2012). Criminology, crime and criminal justice in Finland. *European Journal of Criminology*, 9, 206-222.

LE BORGNE, Carine (2007). Child Participation: A Way to Prevent First-Time Offending. In MEUWESE, S., DETRICK, S., & JANSEN, S. (Eds.) (2007): *100 Years of Child Protection* (139-144). Nijmegen: Wolf Legal Publishers.

Legfőbb Ügyészség Informatikai Főosztály (2013). Tájékoztató a gyermekkorúak és a fiatalkorúak bűnözésével összefüggő egyes kérdésekről. Retrieved from http://ugyeszseg.hu/repository/mkudok9816.pdf (24/04/201)

LÉVAY Miklós (1989). A fiatalkorúak igazságszolgáltatási rendszerére vonatkozó ENSZ minimum szabályok: a „Pekingi Szabályok".*Jogtudományi Közlöny* 12, 664-668.

LÉVAY Miklós (2000). Az angol büntető igazságszolgáltatási politikáról, annak szerzőiről és szereplőiről. In Lévay M. (Ed.). *Kriminálpolitika és büntető igazságszolgáltatás Nagy-Britanniában a '90-es években*. Bűnügyi Tudományi Közlemények (49-87). Budapest: Bíbor Kiadó.

LÉVAY Miklós (2005). Az Európa Tanács R (2003) 20. számú ajánlása a fiatalkorú bűnelkövetőkre vonatkozó igazságszolgáltatási rendszerről. *Család, Gyermek, Ifjúság*, 3, 21-28. Retrieved from http://www.csagyi.hu/images/stories/kiadvanyok/folyoirat/CsaGyI_2005_3.pdf (22/03/2014)

LÉVAY Miklós (2006a). A magyar kriminológiai gondolkodás fejlődése. In GÖNCZÖL K., KEREZSI K., KORINEK L. & LÉVAY M. (Eds.). *Kriminológia-szakkriminológia* (525-542). Budapest: Complex Kiadó.

LÉVAY Miklós (2007). '*Social* Exclusion': A Thriving Concept in Contemporary Criminology; Social Exclusion and Crime in Central and Eastern Europe. In AROMAA, K. (Ed.). P*enal policy, justice reform, and social exclusion. Plenary presentations held at the Fifth Annual Conference of the European Society of Criminology*, *31 August – 3 September 2005, Krakow, Poland* (7-26). Helsinki: HEUNI.

LÉVAY Miklós (2008). A*z* I. büntető novella fiatalkorúakra vonatkozó rendelkezései.*Jogtörténeti Szemle*, 4, 28-32.

LÉVAY Miklós (2009). A gyermek érdekétől a megérdemelt büntetésig: a fiatalkorúakra vonatkozó büntető igazságszolgáltatás alakulása az Amerikai Egyesült Államokban. In HOLÉ K., KABÓDI Cs., & MOHÁCSI B. (2009). *A Dolgozatok Erdei Tanár Úrnak* (225–239). Budapest: ELTE Állam- és Jogtudományi Kara.

LÉVAY Miklós (2012). Penal Policy, Crime and Political Change. In SELIH, A., &ZAVRSNIK, A. (Eds.) *Crime and Transition in Central and Eastern Europe* (117-153). New York: Springer.

LÉVAY Miklós (2016). Youth Justice in Hungary During the 20th and 21st Centuries. *Oxford Handbooks Online*. Retrieved fromhttp://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-69?rskey=HEzjSo&result=2 (08/06/2016)

LIEFAARD, Ton (2008). *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards.* School of Human Rights Research Series. Vol. 28. Amsterdam: Intersentia.

LIGETI Katalin, & HOLLÁN Miklós (2009). *A fiatalkorú elítéltek áldozati minőségének vizsgálata*. In BORBÍRÓ A., KEREZSI K. (Eds.). *A krimálpolitika és a társadalmi bűnmegelőzés kézikönyve I.* (285-298). Retrieved from http://bunmegelozes.easyhosting.hu/dok/tamop_tk_1_alt+gyfk.pdf (12/08/2013)

LIGETI Katalin, & HOLLÁN Miklós (2009). *A fiatalkorú elítéltek áldozati minőségének vizsgálata különös tekintettel a családon belüli erőszakra*. [Project report] Budapest: Országos Bűnmegelőzési Bizottság.

LIGETI Katalin (2006). *A fiatalkorúak büntető igazságszolgáltatási törvényének koncepciója*. Büntetőjogi Kodifikáció, 6 (2), 21-38.

LIGETI Katalin (2008). *A fiatalkorúak büntető igazságszolgáltatásának reformja hazánkban*. Rendészeti szemle, 56(7-8) 3-19.

LILLY, J. Robert, Cullen, Francis T., & Ball, Richard A. (2011). *Criminological Theory. Context and Consequences*. USA: Sage.

LOEBER, Rolf, FARRINGTON, David P., &PETECHUCK, David (2003). *Child delinquency: early intervention and prevention.* [OJJDP Publications On-line] Retrieved from https://www.ncjrs.gov/pdffiles1/ojjdp/186162.pdf (05/03/2014)

LOEBER, Rolf, HOEVE, Machteld, FARRINGTON, David P., HOWELL James C., SLOT N. Wim & VAN DER LAAN Peter H. (2012). Overview, Conclusions, and Policy and research recommendations. IN LOEBER R., HOEVE, M., SLOT N. W., VAN DER LAAN, P. H. (Eds.). *Persisters and Desisters in Crime from Adolescence into Adulthood (*335-412*)*. Surrey: Ashgate.

LYGSTAD, Torkild H., & SKARDHAMMAR, Torbjorn (2011). Nordic Register Data and Untapped Potential for Criminological Knowledge. *Crime and Justice*, 40 (1), 613-645.

MASTEN, Ann S. (2001). Ordinary Magic. Resilience Process in Development. *American Psychologist*, 56 (3) 227-238.

Magyar Helsinki Bizottság (2013a). Jelentés a tököli Fiatalkorúak Büntetés-végrehajtási Intézetében 2013. november 4–5-én tett látogatásról. Retrieved from http://helsinki.hu/wp-content/uploads/Jelent%C3%A9s-T%C3%B6k%C3%B6l-+-BVOP-nak_v%C3%A9gleges-anonim.pdf (07/08/2014).

Magyar Helsinki Bizottság (2013b). Jelentés a Baranya Megyei Büntetés-végrehajtási Intézetben 2013. augusztus 12-13-án tett látogatásról. Retrieved from http://helsinki.hu/wp-content/uploads/MHB_jelentes_Baranya_Megyei_Bv_Intezet_2013_vegleges.pdf (11/11/2015).

MCARA, Lesley (2002). The Scottish Juvenile Justice System: Policy and Practice. In WINTERDYK, J. A. (Ed.). *Juvenile Justice Systems: International Perspectives* (441-475). 2 nd ed. Toronto: Canadian Scholars Press.

MCARA, LESLIE (2006). Welfare Crisis? Key Developments in Scottish Youth Justice. In MUNCIE, J. & GOLDSON B. (Eds.). *Compatarive Youth Justice* (127-146). Sage.

MCCORD, Joan (2004). Toward a Theory of Criminal Responsibility. In MCCORD, J. (Ed.). *Beyond Empiricism. Institutions and Intentions in the Study of Crime* (147-176). New Jersey: Transaction Publishers.

MCDIARMID, Claire (2013). An Age of Complexity: Children and Criminal Responsibility in Law. *Youth Justice*, 13(2), 145–160.

MESKÓ Éva (1978). A gyermekkori kriminalitásról. In Gödöny József (Ed.). *Kriminológiai és Kriminalisztikai Tanulmányok 15*. (252-279). Budapest: Közgazdasági és Jogi Könyvkiadó.

MESKÓ Éva (1980). A gyermekkori kriminalitásról vallott nézetek a polgári szakirodalomban. In Gödöny J. (Ed.). *Kriminológiai és kriminalisztikai tanulmányok* 17. (301-330). Budapest: Közgazdasági és Jogi Könyvkiadó.

MÉREI Ferenc, V. BINÉT Ágnes (1993). *Gyermeklélektan***.** Gondolat, Budapest.

MEŠKO, Gorazd (2009). Transfer of Crime Control Ideas – Introductory Reflections. In MESKO, G., & KURY, H. (Eds.). *Crime Policy, Crime Control and Crime Prevention – Slovenian Perspectives* (19-43). Ljubljana: Tipografija Publishing.

Ministry of Social Affairs and Health (2006). Social Welfare in Finlad. Helsinki, Finland. Retrieved from http://pre20090115.stm.fi/aa1161155903333/passthru.pdf (17/06/2012)

Ministry of Social Affairs and Health (2011). Don't hit the child. National Action Plan to Reduce Corporal Punishment of Children 2010-2015. Helsinki, Finland. Retrieved from: http://www.stm.fi/c/document_library/get_file?folderId=3320152&name=DLFE-16239.pdf (23/03/2014)

MOLNÁR József (1971). *Galeribűnözés*. Budapest: Közgazdasági és Jogi Könyvkiadó.

MOLNÁR József (1987): *Új jelenségek a fiatalkori bűnözésben*. Kriminológiai és kriminalisztikai tanulmányok 24 (232-262). Budapest: Közgazdasági és Jogi Könyvkiadó.

MUNCIE, John (2005). Theglobalization of crime control—the case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions. *Theoretical Criminology*, 9(1), 35–64.

MUNCIE, John (2008). The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA. *Youth Justice,* 8, 107-121.

MUNCIE, John, & GOLDSON, Barry (2006): *Comparative Youth Justice. Critical Issues.* New York: Sage.

MUNK Veronika (1 January 2018): *Nincsen gyerekszobájuk* [On-line article]. Retrieved from http://index.hu/belfold/gyerek080115/

MYERS, W.C. (1992). What treatments do we have for children and adolescents who have killed? *Bullettin of American Academy of Psychiatry and the Law*, 20, 47-58.

NAGY Ferenc (2013) Régi és új tendenciák a büntetőjogban és a büntetőjogtudományban. Budapest: Akadémiai Kiadó.

NAJMAN, Jake M., HAYATBAKHSH, Mohammad R., MCGEE, Tara R., BOR William, O'CALLAGHAN, Michael J. & WILLIAMS, Gail M. (2009). The Impact of Puberty on Aggression/Delinquency: Adolescence to Young Adulthood.*Australian & New Zealand Journal of Criminology*, 42, 369-386.

National Institute for Health and Welfare (2010). Child Welfare 2010 - Statistical report. Retrieved from http://www.stakes.fi/tilastot/tilastotiedotteet/2011/Tr29_11.pdf(15/08/2012)

National Institute for Health and Welfare (2015). Statistical yearbook on social welfare and health care 2015. Retrieved from http://www.julkari.fi/bitstream/handle/10024/129792/Sosiaali-%20ja%20terveysalan%20tilastollinen%20vuosikirja%202015%20web.pdf?sequence=5 (15/03/2016)

NELKEN, David (2012). Comparing Criminal Justice. In MAGUIRE, Mike, MORGAN, Rod, & REINER, Robert (Eds.). *The Oxford Handbook of Criminology* (139-149). Oxford University Press, New York.

NELSON, Charles A., ZEANAH, Charles H., FOX, Nathan A., MARSHALL, Peter J., SMYKE, Anna T., & GUTHRIE, Donald (2007). Cognitive recovery in socially deprived young children: The Bucharest Early Intervention Project.*Science*, 318, 1937-1940.

NELSON, K. (2008). *The Social Assistance and Minimum Income Protection Interim Data-Set.* Documentation. Swedish Institute for Social Research. Retrieved from http://people.su.se/~kennethn/Documentation.pdf (21/08/2013)

NELSON, Kenneth (2010). Social assistance and minimum income benefits in old and new EU democracies.*International Journal of Social Welfare*, 19, 367–378.

NGO Coalition for Children's Rights (2014). Children's Rights in the Netherlands. 4th NGO Report of the Dutch Coalition for Children's Rights. Retrieved from http://www.kinderrechten.nl/images/16/434.pdf (22/06/2016)

NIEUWBERTA, P., VAN DER LAAN, P., KONIJNENDIJK, E., & KRAMMER, T. (2005). *Minderjarigen en moord en doodslag. Een eerste verkenning van prevalentie, achtergronden en afhandeling.* Amsterdam: NSCR.

NYITRAY Zsuzsanna (2012). A Gyermekjogi Egyezmény 3. cikk 1. bekezdésének értelmezési és alkalmazási nehézségei. In Fazekas Marianna (Ed.). Jogi Tanulmányok, II. Kötet (197-210). Budapest: ELTE.

NYQUIST, Ola (1960). *Juvenile Justice. A Comparative Study with Special Reference to the Swedish Child Welfare Board and the California Juvenile Court System*. London: Macmillan & Co.

OLWEUS, Dan (2011). Bullying at school and later criminality: Findings fromthree Swedish community samples of males. *Criminal Behaviour and Mental Health*, 21, 151–156.

O'MAHONY, Paul (2009). The Risk Factors Prevention Paradigm and the Causes of Youth Crime: A Deceptively Useful Analysis?*Youth Justice*, 9, 99-114.

Ombudsman for Children (2011a). *Report to the UN Committee on the Rights of the Child*. [Supplementary report to Finland's 4th Periodic Report]. Publication by the Office of the Ombudsman for Children .

Ombudsman for Children (2011b). *More Similar than Different. The Welfare of Roma Children and Youth and the Realization of their Rights in Finland.* Publication by the Office of the Ombudsman for Children.

Ombudsman for Children (2011c). *"Being Saami is a Gift". The Welfare of Saami Children and the Realization of their Rights in the Finnish Saami Region.* Publication by the Office of the Ombudsman for Children.

PÁLVÖLGYI Ákos (2012). A megelőző pártfogás mint a bűnmegelőzés egyik lehetséges eszköze. *Büntetőjogi Szemle*, 2012/2, 29-34, Retrieved fromhttp://ujbtk.hu/wp-content/uploads/PDF_EPUB/bjsz_2012_2_cikk4.pdf (14/03/2014)

PATTERSON, G. R, DEBARYSHE, Barbara D. &RAMSEY, Elizabeth (1989). A Developmental Perspective on Antisocial Behavior. *American Psychologist*, 44 (2) 329-33.

Penal Reform International (2013). The right of children deprived of their liberty to make complaints, Retrieved from http://www.penalreform.org/wp-content/uploads/2013/08/Briefing_child-complaints-v4_FINAL.pdf (15/11/2015)

Penal Reform International: *Ten-Point Plan for Fair and Effective Criminal Justice for Children, 2012. Retrieved from* http://www.penalreform.org/wp-content/uploads/2013/05/10-pt-children-2nd-ed-english-v7.pdf(23/03/2014)

PESKIN, M., GLENN, A.A., GAO, Y., LIU, J., SCHUG, R. A., YANG, Y., &RAINE, A. (2012) Personal Characteristics of Delinquents. Neurobiology, genetic predispositions, individual psychological attributes. In FELD, B.,& BISHOP, D. M. (Eds.). *Juvenile Crime and Juvenile Justice* (73- 106). New York: Oxford.

PETROVEC, Dragan, & MURSIC, Mitja (2011). Science Fiction or Reality: Opening Prison Institutions (The Slovenian Penological Heritage). *The Prison Journal*, 91, 425- 447.

PINHEIRO, Paulo Sergio (2006). *World Report on Violence Against Children.* Independent Expert for the United Nations Secretary General's Study on Violence Against Children.

PIQUERO, A., JENNINGS, W.G., & FARRINGTON, D. P. (2009). *Effectiveness of Programs Designed to improve Self-Control*. Stockholm: Swedish National Council of Crime Prevention.

PIQUERO, Alex R., SULLIVAN, Christopher J. &FARRINGTON, David P. (2010). Assessing Differences Between Short-Term, High-Rate Offenders and Long-Term, Low-Rate Offenders. *Criminal Justice and Behavior,* 37, 1309-1329.

PIQUERO, A., JENNINGS, W.G., FARRINGTON, D. P., WELSH, B., & TREMBLAY, R. (2008). *Effects of Early Family/Parent Trainig Programs on Antisocial Behaviour and Delinquency*. Stockholm: Swedish National Council of Crime Prevention.

PLATT, Anthony. (1972). *The Child Savers. The Invention of Delinquency.* The University of Chicago Press.

PRATT, John (2008). Scandinavian exceptionalism in an era of penal excess. Part I.: the nature and roots of scandinavian exceptionalism. *British Journal of Criminology*, 48, 119-137.

PÖSÖ, T., KITINOJA, M., &KEKONI, T. (2010). Locking up for the best interest of the Child – Some preliminary remarks on 'Special care'. *Youth Justice*, 10 (3), 245-257.

PÖSÖ, T.,LAASKSO, R, (2015). Holistic, expert and centralised models for organising care placement decisions: findings from Finland. *Adoption & Fostering*, Vol. 39(2), 159–169.

PRINZ, Ronald J., SANDERS, Matthew R., SHAPIRO, Cheri J., WHITAKER, Daniel J., & LUTZKER, John. (2009). *Population-Based Prevention of Child Maltreatment: The U.S. Triple P System Population Trial*. Retrieved from http://www.springerlink.com/content/a737l8k76218j7k2/fulltext.pdf) (10/04/2012)

PRUIN, Ineke (2010). The scope of juvenile justice systems in Europe.In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments. Vol. 2*. (1539-1582). Mönchengladbach: Forum Verlag Godesberg.

PUT, Johan & WALGRAVE, Lode (2006). Belgium: From protection towards Accountability? In MUNCIE, J. & GOLDSON B. (Eds.). *Compatarive Youth Justice* (127-146). Sage.

PUT, Johan, VANFRAECHEM, Inge & WALGRAVE, Lode (2012). Restorative Dimensions in Belgian Youth Justice. *Youth Justice,* 12, 83-100.

Raad voor Strafrechtstoepassing en Jeugdbescherming (2011). Het jeugdstrafproces: toekomstbestendig! Retrieved from https://www.rsj.nl/actueel/nieuwsberichten/advies-jeugdstrafproces-toekomstbestendig-aangeboden-aan-staatssecretaris.aspx (13/5/2016)

RANSCHBURG Jenő (2009). *Nyugtalan gyermek. Hiperaktivitás és agresszió a serdülőkorban*. Budapest: Saxum Kiadó.

RANSCHBURG Jenő (2010). *Mélységből kiáltok: Depresszió, öngyilkosság és kábítószer a serdülőkorban*. Budapest: Saxum Kiadó.

REICHEL, Philip L. (2012). *Comparative Justice Systems – a topical approach*. US: Prentice Hall.

De Rechtspraak, Combi-zitting: meer recht doen aan jeugdigen. Retrieved from https://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/WetenschapsOnderzoek/Overzichtonderzoeksprojecten/Pages/Combi-zitting-meer-recht-doen-aan-jeugdigen.aspx (9/11/2015)

Reuters (2014). Hungary raids NGOs, accuses Norway of political meddling. Retrieved from http://www.reuters.com/article/2014/06/02/us-hungary-norway-funding-ngo-idUSKBN0ED1QW20140602 (15/11/2014)

RITTER Ildikó (2004). Fiatalok a bűnözés ellen – viktimológiai vizsgálat középiskolások körében. In Irk F. (Ed.). *Kriminológiai Tanulmányok 41*. (114-136). Budapest: OKRI.

ROCK, Paul (2012): Sociological Theories of Crime. In MAGUIRE, Mike, MORGAN, Rod, & REINER, Robert (Eds.). *The Oxford Handbook of Criminology* (39-81). Oxford University Press, New York.

RODGER, John J. (2000). *From a Welfare State to a Welfare Society – The changing context of sociel policy in a postmodern era*. Houndmills: Palgrave Macmillan.

RODGER, John J. (2008). *Criminalizong social policy – Anti-social behaviour and welfare in de-civilised society*. Cullempton: Willan Publishing.

ROSTA Andrea (2014): *A fiatalkorú bűnözés kriminológiája és szociológiája*. Budapest: L'Harmattan Kiadó.

SAMPSON, Robert J., LAUB, John H. (2005). A Life-Course View of the Development of Crime.*Annalsof the American Academy of Political and Social Science*, Vol. 602:

Developmental Criminology and Its Discontents: Trajectories of Crime from Childhood to Old Age (*12-45*). Sage.

SAMUELS, Julie E. (2001). An Update on the Cycle of Violence. National Institute of Justice. U.S, Department of Justice. [Research in Brief] Retrieved fromhttps://www.ncjrs.gov/pdffiles1/nij/184894.pdf (10/03/2014).

SANDERS, Matthew R., MARKIE-DADDS Carol, &TURNER, Karen M.T. (2003). Theoretical, Scientific and Clinical Foundations of the Triple P-Positive Parenting Program: A Population Approach to the Promotion of Parenting Competence. The Parenting and Family Support Centre, The University of Queensland. Retrieved from http://www.triplep.net/files/pdf/Parenting_Research_and_Practice_Monograph_No.1.pdf (07/05/2012)

SÁRIK Eszter (2001). A gyermek- és fiatalkori bűnözés napjainkban. *Belügyi Szemle*, 49(2) 48-60.

SÁRIK Eszter (1999). A társadalmi környezet és a gyermekkori kriminális deviancia összefüggései.*Belügyi Szemle* 47(6), 89-102.

SÁRIK Eszter, & VASVÁRI Csaba (2000). Valóban az erőszak a főszereplő? A gyermek- és fiatalkori bűnözés tendenciái napjainkban. *Belügyi Szemle*, 48(7-8), 57-67.

SÁRIK Eszter (2000). *A gyermek- és fiatalkori bűnözés megelőzési lehetőségei.* Család, Gyermek, Ifjúság, 2, 4-13.

SÁRIK Eszter (2001). A kiskorú az áldozat, avagy hol tart napjainkban a hatósági együttműködés a gyermekek érdekében. In Irk F. (Ed.). *Kriminológiai Tanulmányok 38*. (181-204). Budapest: OKRI

SATKA, Mirja, HARRIKARI, Timo, HOIKKALA, Susanna & PEKKARINEN, Elina (2007). The Diverse Impacts of the Neo-liberal Social Policies on Children's Welfare and Social Work With Young People: the Finnish Perspective. *Social Work and Society*, 125-135.

SAVOLAINEN, J., HINKKANEN V., &PEKKARINEN E. (2007). *A Longitudinal Study of Offending Patterns and Social Service Interventions* [Project report]. National Research Institute of Legal Policy.

SCHEIWE, Kirsten (2007). Serious Delinquency of Children Not Liable Under Criminal Law in Germany: Schould Family Court Intervene More? In MEUWESE, S., DETRICK, S., &JANSEN, S. (Eds.). *100 Years of Child Protection* (93-204). Nijmegen: Wolf Legal Publishers.

SCHLESS, Robert (1964). *The Children and Young Persons Act*. London: Butterworths.

SIEGEL, Dina (2013). Mobiel banditisme. Oost- en Centraal-Europese rondtrekkende criminele groepen in Nederland. Politie en Wetenschap. Retrieved from https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2013/10/10/rapport-mobiel-banditisme-docx/lp-v-j-0000004191.pdf. (07/02/2016)

SIMONS, R I., SIMONS, L.G., &HANCOCK, D. (2012). Linking Family Process and Adolescent Delinquency. Issues, Theories, and Research Findings. In FELD, B., &BISHOP, D. M. (Eds.). *Juvenile Crime and Juvenile Justice* (175-202). New York: Oxford.

SMITH, A.T.H. (1994). Doli Incapax Under Threat.*The Cambridge Law Journal*, 53, 426-428.

SMIT, P. R., & NIEUWBEERTA, P. (2007). *Homicide in the Netherlands 1998 and 2002-2004*. [Project report] Retrieved from http://english.wodc.nl/onderzoeksdatabase/moord-en-doodslag-2003.aspx (20/09/2013)

SOETMAN, I. D., & BUSSCHBACH, J.V. J.: Cost-Benefit and Cost-Effectiveness of Prevention and Treatment. In LOEBER, R., SLOT, N. W., VAN DER LAAN, P., &HOEVE, M. (Eds.). *Tomorrow´s Criminals. The Development of Child Delinquency and Effective Interventions* (215-226). Bodmin: Ashgate, 2008.

SOLT Ágnes (2009). Támogatóés gyengítő faktorok a kriminális érintettség kialakulásában. In BORBÍRÓ A., KEREZSI K. (Eds.). *A krimálpolitika és a társadalmi bűnmegelőzés kézikönyve I.* (313-328). Retrieved from http://bunmegelozes.easyhosting.hu/dok/tamop_tk_1_alt+gyfk.pdf (12/08/2013)

Statistical Office of the Republic of Slovenia (2013). Adults, juveniles and legal persons against whom criminal proceedings through a senate have been legally concluded, Slovenia, 2012 - final data. Retrieved from http://www.stat.si/eng/novica_prikazi.aspx?id=5607 (30/09/2014)

Statistics Netherlands, Youth in the Netherlands, 2012. Retrieved from http://jeugdmonitor.cbs.nl/en-gb/publications/2012/annual-report-2012-summary/ (10/01/2014)

STEKETEE, Majone (2012). Substance Use of Young People in 30 Countries**.** In JUNGER-TAS, Josine, HAEN MARSHALL, Ineke, ENZMANN, Dirk, KILLIAS, Martin, STEKETEE, Majone, & GRUSZCZYNSKA, Beata (Eds.). *The Many Faces of Youth Crime* (117-141). New York: Springer.

STEVENS, Alex (2009). Trends in Youth Offending in Europe. In JUNGER-TAS, Josine, & DÜNKEL, Frieder (Eds.). *Reforming Juvenile Justice* (33-43). New York: Springer

STOLTZFUS, Emilie (2009). The Child Abuse Prevention and Treatment Act (CAPTA): Background, Programs, and Funding. Congressional Research Service. Retrieved from http://www.napcwa.org/Legislative/docs/CAPTACongressionalResearchReport.pdf(10/04/2012)

ŠUGMAN, Katja, PERŠAK, Nina, JAGER, Matjaž, & FILIPČIČ, Katja (2004). *Slovenia*. Helsinki: HEUNI. Retrieved from http://www.heuni.fi/material/attachments/heuni/profiles/6KvFFxs6p/Slovenia_pdf.pdf (28/02/2014)

SZABÓ ANDRÁS (1961). *A fiatalkorúak és a büntetőjog*. Budapest: Közgazdasági és Jogi Könyvkiadó.

Tabby Internet Project: Online bullying kézikönyv pedígógusoknak. Retrieved from http://hun.tabby.eu/toumlltsd-le-az-informaacutecioacutes-fuumlzetet.html (04/02/2014)

TATEM KELLEY, Barbara, THORNBERRY, Terence, & SMITH Carolyn A. (1997). *In the Wake of Childhood Maltreatment*. Office of Juvenile Justice and Delinquency Prevention. Retrieved from https://www.ncjrs.gov/pdffiles1/165257.pdf (19/04/2012)

The Howard League of Penal Reform (2014). Children's Rights Behind Bars. Retrieved from http://www.childrensrightsbehindbars.eu/images/national-reports-2014/UNITED%20KINGDOM%20FINAL%20REPORT.pdf (14/11/2015)

TOPITZES, J., MERSKY, J.P., & REYNOLDS, A.J. (2012). From Child Maltreatment to Violent Offending: An Examination of Mixed-Gender and Gender-Specific Models.*Journal of Interpersonal Violence* 27, 2322-2347.

TONRY, Michael (2013). Learning Cross-Nationally from Josine Junger-Tas: How Knowledge About Other Places and Times Helps Us Better Understand Our Own. *European Journal on Criminal Policy and Research*, 19,(2), 85-90.

TONRY, M., & CHAMBERS, C. (2012): Juvenile Justice Cross-nationally considered. In: FELD, B.C., BISHOP, D.M. (Eds.). *The Oxford Handbook of Juvenile Crime and Juvenile Justice* (871-897). London: Oxford University Press.

LYNGSTAD, Torkild Hovde, & SKARDHAMAR, T. (2011). Nordic Register Data and Their Untapped Potential for Criminological Knowledge.*Crime and Justice*, 40, 613-645.

TRAUB, S. H., & LITTLE, C. B. (1999). *Theories of deviance*. Cortland, New York: State University of New York at Cortland.

TURNELL, A., & EDWARDS, S. (1997). *Aspiring to partnership.* The Signs of Safety approach to child protection.*Child Abuse Review*, 6, 179-190.

UIT BEIJERSE, Jolande, & VAN SWAANINGEN, René (2006). The Netherlands: Penal Welfarism and Risk Management. In GOLDSON, B. & MUNCIE, J. (Eds.). *Comparative Youth Justice: Critical Issues* (65-77). London: Sage.

U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2010). *Child Maltreatment 2009*. Retrieved from http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can) (10/04/2012)

VÁLKOVÁ, Helena & HULMÁKOVÁ, Jana (2010). Czech Republic. In DÜNKEL, F., GRZYWA, J., HORSFIELD, P., & PRUIN, I. (Eds.). *Juvenile Justice Systems in Europe. Current Situation and Reform Developments* (253-304). *Vol. 1*. Mönchengladbach: Forum Verlag Godesberg.

VÁRADI Erika (2001). Agyermek- és fiatalkori bűnözés – tendenciák, elméletek, okok.*Kriminológiai Közlemények* 59, 55-91.

VASKUTI András (2008). Életkor és belátási képesség a magyar büntetőjogban – jogalkotási és jogalkalmazási kérdések. *Kriminológia Közlemények* 65, 9-18.

VASKUTI András (2015). Az életkor és a fiatalkorúakra vonatkozó rendelkezések az új Btk-ban. *Jogtudományi Közlöny*, 70(4)173-182.

VÁVRA, Martin (2012). Age as a Problematic and Problematized Issue of Criminal Responsibility. *Central European Journal of Public Policy*, 30-54.

VAVRÓ István (2007). Népesedési folyamatok és a fiatalkori bűnözés. In Both E. &Deres P. (Ed.) Kriminológia Közlemények 64., 183-199.

VAVRÓ István (2002). A gyermek- és fiatalkori bűnözés. *Kriminológia Közlemények 60,* 5-12.

VEČERKA Kazimír (2011). The Role of Prevention in the Control of Criminality in Particular in Relation to Young People. In KARABEc Z. (Ed.). C*rime from the perspective of criminologists* (71-88). Prague: ICSP.

VEČERKA Kazimír, HOLAS, Jakub, TOMÁŠEK, Jan, DIBLÍKOVÁ Simona, BLATNÍKOVÁ, Šárka (2009). Youth in a criminological perspective. In SCHEINOST, M. (Ed.) S*elected results of research activities of ICSP in the years 2004-2007* (116-125), Praha: ICSP.

VOLENTICS Anna (1999). *Gyermekvédelem és reszocializáció*. Budapest: Nemzeti Tankönyvkiadó.

VÍGH József (1987). A fiatalkori bűnözés megelőzésének néhány kérdése. *Belügyi Szemle* 1987/2, 43-50.

VILUSZ Antónia (Ed.) (1995). *A gyermekvédelemben alkalmazható nemzetközi vonatkozású jogszabályok, egyéb normák és irányadó dokumentumok.* Kobak könyvek. Budapest: Nemzetközi Gyermekmentő Szolgálat Magyar Egyesülete

VIRÁG György (2009). A fiatalkori bűnelkövetés egyes jellemzői. *Rendészeti Szemle*. 57(2), 99-115.

WACQUANT, Loic (2001). The Penalisation of Poverty and the Rise of Neo-liberalism. *European Journal on Criminal Policy and Research*, 9(4) 401–412.

WALLER, Irvin (2007). Invest Now in Kids or Pay Later for the Last Resort: Misspent Youth, Crime and Kids Behind the Bars. In MEUWESE, S., DETRICK, S., & JANSEN, S. (Eds.). *100 Years of Child Protection* (241- 258). Nijmegen: Wolf Legal Publishers.

WEERMAN, F. (2007). Juvenile Offending. In TONRY, M., & BILJEVELD, C. (Eds) (2007). *Crime and Justice in the Netherlands* (261-318). London: The University of Chicago Press.

WEIJERS, Ido, NUYTIENS, An & CHRISTIAENS, Jenneke (2009). Transfer of Minors to the Criminal Court in Europe: Belgium and the Netherlands. In JUNGER-TAS, J., & DÜNKEL, F. (Eds.). *Reforming Juvenile Justice* (105-124). New York: Springer.

WEIJERS, Ido, RAP, Stephanie (2014). The Effective Youth Court. The Hague: Eleven Publishing.

WELSH, Brandon C. (2012). *Delinquency Prevention*. In FELD, B., &BISHOP, D. M. (Eds.). *Juvenile Crime and Juvenile Justice* (395-410). New York: Oxford.

WENAR, Charles, & KERIG, Patricia (2011). *Developmental Psychopatology: From Infancy through Adolescence*. Fifth Edition. New York: McGraw-Hill.

WIIG, Janet K. (2001). *Legal Issues*. IN LOEBER, R., FARRINGTON, D. P.: *Child Delinquents: Development, Intervetnion and Service Needs*. USA: Sage.

WINTERDYK, John A. (Ed.) (2002). *Juvenile Justice Systems: International Perspectives*. Second Edition. Toronto: Canadian Scholars Press.

World Health Organization and International Society for Prevention of Child Abuse and Neglect (2006). *Preventing Child Maltreatment: A guide to taking action and generating evidence*. Retrieved from http://whqlibdoc.who.int/publications/2006/9241594365_eng.pdf (10/04/2012)

YOUNG, Jock (2011). *The Criminological Imagination*. Cambridge: Polity Press.

ZEANAH, C. H., NELSON, C. A., & FOX, N. A. (2012). Case Study in the Ethics of Research: The Bucharest Early Intervention Project.*The Journal of Nervous and Mental Disease*. 200(3), 243-247.

ZELAZO, Philip D. (2013). Developmental Psychology: A New Synthesis. In ZELAZO, P. D. (Ed.): *The Oxford Handbook of Developmental Psychology, Vol. 1: Body and Mind.* Online version. Retrieved from http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199958450.001.0001/oxfordhb-9780199958450-e-1 (9/27/2015).

ZIMMERMANN, Francie, & MERCY, James A. (2010). A Better Start. Child Maltreatment Prevention as a Public Health Priority.*Zero To Three*, 30(5), 4-10.

UN DOCUMENTS

United Nations Convention on the Rights of the Child. UN General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990

International Covenant on Civil and Political Rights. UN General Assembly resolution Nr. 14668 of 19 December 1966

United Nations Declaration on the Rights of the Child. UN General Assembly Resolution 1386 (XIV) of 10 December 1959

United Nations Rules for the Protection of Juveniles Deprived of their Liberty. UN General Assembly Resolution 45/113 of 14 December 1990

United Nations Guidelines for the Prevention of Juvenile Delinquency. ("The Riyadh Guidelines) UN General Assembly Resolution 45/112 of 14 December 1990

United Nations Standard Minimum Rules for the Administration of Juvenile Justice. ("The Beijing Rules") UN General Assembly resolution 40/33 of 29 November 1985

United Nations Guidelines for the Alternative Care of Children. UN General Assembly resolution 64/142 of 42 February 2010

United Nations Independent Expert for the Secretary-General Study on Violence against Children, 2006. Retrieved from http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/491/05/PDF/N0649105.pdf?OpenElement (15/11/2014)

CRC General Comment No. 5 (2003) on *General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6) of 27 November 2003

CRC General comment No. 4 (2003) on *Adolescent health and development in the context of the Convention on the Rights of the Child* of 1 July 2003

CRC General Comment No. 7 (2005) on *Implementing child rights in early childhood* of 20 September 2006

CRC General Comment No. 10 (2007) on *Children's rights in Juvenile Justice* of 9 February 2007

CRC General Comment No. 12 (2009) on *The right of the child to be heard* of 20 July 2009

CRC General Comment No. 13 (2011) on *The right of the child to freedom from all forms of violence* of 18 April 2011

CRC General comment No. 14 (2013) on *The right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1) of 29 May 2013

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD:

Concluding observations: **Austria**, Nr. CRC/C/AUT/CO/3-4. Of 5 October 2012, Retrieved from http://www.kinderrechte.gv.at/wp-content/uploads/2013/10/Consideration-of-reports-submitted-by-States-parties-under-article-44-of-the-Convention-Concluding-observations-Austria-20121.pdf (20/09/2015)

Concluding observations: **Belgium**, Nr. CRC/C/BEL/CO/3-4., of 18 June 2010, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.BEL.CO.3-4.doc (24/03/2014)

Concluding observations: **Bulgaria**, Nr. CRC/C/BGR/CO/2 of 23 June 2008, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/BGR/CO/2&Lang=En (20/09/2015)

Concluding observations: **Cyprus**, Nr. CRC/C/CYP/CO/3-4. Of 10 August 2012, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CYP/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Croatia**, Nr. CRC/C/HVR/CO/3-4 of 13 October 2014, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/DEU/CO/3-4&Lang=En (20/09/2015)

Concluding observations for **Czech Republic**, Nr. CRC/C/CZE/CO/3-4 of 4 August 2011. Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CZE/CO/3-4&Lang=En (06/08/2014)

Concluding observations: **Denmark**, Nr. CRC/C/DNK/CO/4 of 7 April 2011, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.DNK.CO.4_en.pdf (20/09/2015)

Concluding observations: **Estonia**, Nr. CRC/C/15/Add.196 of 17 March 2003, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/15/Add.196&Lang=En (20/09/2015)

Concluding observations: **Finland**, Nr. CRC/C/FIN/CO/4 of 3 August, 2011, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/FIN/CO/4&Lang=En (24/03/2014)

Concluding observations: **France,** Nr. CRC/C/FRA/CO/4 of 11 June 2009, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-FRA-CO-4.pdf (20/09/2015)

Concluding observations: **Germany,** Nr. CRC/C/DEU/CO/3-4 of 25 February 2014, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/DEU/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Greece**, Nr. CRC/C/GRC/CO/2-3. 13 August 2012, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_GRC_CO_2-3.pdf (20/09/2015)

Concluding observations for **Hungary**, Nr. CRC/C/HUN/CO/3-4 of 14 October 2014. Retrieved from (20/09/2015)

Concluding observations: **Ireland**, Nr. CRC/C/IRL/CO/2 of 29 September 2006, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/IRL/CO/2&Lang=En (20/09/2015)

Concluding observations: **Italy**, Nr. CRC/C/ITA/CO/3-4, 31 October 2011, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ITA/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Latvia**, Nr. CRC/C/LVA/CO/2, of 28 June 2006, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/LVA/CO/2&Lang=En (20/09/2015)

Concluding observations: **Lithuania**, Nr. CRC/C/LTU/CO/3-4. Of 4 October 2013, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/LTU/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Luxembourg**, Nr. CRC/C/LTU/CO/3-4. of 29 October 2013, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/LUX/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Malta,** Nr. CRC/C/MLT/CO/2, of 18 June 2013 Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MLT/CO/2&Lang=En (20/09/2015)

Concluding observations: **Netherlands**, Nr. CRC/C/NLD/CO/3. of 27 March 2009, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf (20/09/2013)

Concluding observations: **Netherlands**, Nr. CRC/C/NLD/CO/4. of 8 June 2015, Retrieved from http://www.dekinderombudsman.nl/ul/cms/fck-uploaded/NetherlandsCOBs.pdf (13/11/2015)

Concluding observations: **Poland**, Nr. CRC/C/15/Add.194 of 30 October 2002, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.194&Lang=en (20/09/2015)

Concluding observations: **Portugal**, Nr. CRC/C/PRT/CO/3-4 of 12 November 2012, Retrieved from

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/PRT/CO/3-4&Lang=En (20/09/2015)

Concluding observations: **Romania**, Nr. CRC/C/ROM/CO/4, 30 June 2009, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ROM-CO-4.pdf (20/09/2015)

Concluding observations: **Slovakia**, Nr. CRC/C/SVK/CO/2 of 10 July 2007, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.SVK.CO.2.pdf (20/09/2015)

Concluding observations for **Slovenia**, Nr. CRC/C/SVN/CO/3-4 of 14 June 2013. Retrieved from https://www.crin.org/docs/CRC-C-SVN-CO-3-4.pdf (06/08/2014)

Concluding observations: **Spain**, Nr. CRC/C/ESP/CO/3-4, of 3 November 2010, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ESP/CO/3-4&Lang=Sp (20/09/2015)

Concluding observations: **Sweden**, Nr. CRC/C/SWE/CO/4 of 26 June 2009, Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SWE/CO/4 (20/09/2015)

Concluding observations: **United Kingdom**, Nr. CRC/C/GBR/CO/4. Of 20 October 2008, Retrieved from http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf (20/09/2015)

REPORTS OF THE COMMITTEE FOR THE PREVENTION OF TORTURE (CPT)

CPT (2015). Report to the Finnish Government on the visit to **Finland** carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 22 September to 2 October 2014

CPT (2014a). Report to the Hungarian Government on the visit to **Hungary**carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 3 to 12 April 2013

CPT (2014b). Report to the Czech Government on the visit to the **Czech Republic** carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 7 to 16 September 2010

CPT(2014c). Report to the Government of the **United Kingdom** on the visit to the United Kingdomcarried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 28 September 2012

CPT (2013). Report to the Slovenian Government on the visit to **Slovenia** carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 31 January to 6 February 2012

CPT (2012). Report to the Government of the Netherlands on the visit to the **Netherlands** carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10 to 21 October 2011

CPT (2009). Report to the Government of the United Kingdom on the visit to the **United Kingdom** carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008

COUNCIL OF EUROPE DOCUMENTS

Statute of the Council of Europe, London, 5.V.1949.

European Convention on Human Rights, Rome, 4.XI.1950.

Recommendation Rec(87)20 the Committee of Ministers to member states on social reactions to juvenile delinquency, adopted on 17 September 1987.

Recommendation Rec(2000)20 of the Committee of Ministers to member states on the early psychosocial intervention int he prevention of criminality, adopted on on 6 October 2000.

Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted on on 24 September 2003.

Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, adopted on 5 November 2008.

EUROPEAN COURT OF HUMAN RIGHTS' CASES

T v. United Kingdom, no. 24724/94 (16 December 1999)
V v. United Kingdom, no. 24888/94 (16 December 1999)
S.C. v. United Kingdom, no. 60958/00 (30 September, 2003)
L. Magyar v. Hungary, no. 73593/10 (10 May 2014)
Brand v. the Netherlands, no. 49902/99 (11 May 2004)
Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, no. 13178/03 (12 October 2006)
Kanagaratnam v. Belgium, no. 15297/09 (13 December 2011)

EUROPEAN UNION DOCUMENTS

Charter of Fundamental Rights of the European Union (2000/C 364/01)

DIRECTIVE (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union (2006/C 110/13)

COM (2011) 60 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on An EU Agenda for the Rights of the Child of Brussels, 15.2.2011.

COM (2010) 573 Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, Brussels, 19.10.2010.

European Commission, Directorate General for Justice (2014). Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union. Luxembourg: Publications Office of the European Union.

European Commission (2014) Children in Judicial Proceedings. Retrieved from http://www.childreninjudicialproceedings.eu

ONLINE TRAINING COURSES

University of Strathclyde (2015). *Caring for Vulnerable Children*. From 23 Feb 2015 to 5 Apr 2015, Available at https://www.futurelearn.com/courses/vulnerable-children (30/04/2016).

IJJO (2015). *Alternatives to Detention for Young Offenders*. From October 2015 to December 2015. Available at http://learning.eijj.org (04/02/2016).

RESOURCES OF NATIONAL LAWS

Belgium

Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade van 8 april 1965 (Youth Protection Act)

Strafwetboek van 8 juni 1867 (Penal Code of Belgium)

Wetboek van Strafvordering van 17 november 1808 (Code of Penal Procedure of Belgium)

Czech Republic

40/2009Act on the Criminal Code of the Czech Republic (Czech CC)

England and Wales

Anti-Social Behaviour Act (2003)

Children and Young Persons Act (1933)

Anti-social Behaviour, Crime and Policing Act (2014)

Legal Aid, Sentencing and Punishment of Offenders Act (2012)

Secure Training Centre Rule (1998)

Power of Criminal Courts (Sentencing) Act (2000)

Finland

Child Welfare Act of Finland, 417/2007

The Penal Code of Finland

Hungary

Magyarország Alaptörvénye (2011 április 25) (Fundamental Law)

1878. évi V. törvénycikk a magyar büntetőtörvénykönyv a büntettekről és vétségekről (Csemegi Kódex)

1901. évi VIII. törvénycikk az állami gyermekmenhelyekről

1908. évi XXXVI. törvénycikk a büntetőtörvénykönyvek és a bünvádi perrendtartás kiegészitéséről és módositásáról (Bn.)

1913. évi VII. törvénycikk a fiatalkorúak bíróságáról

1978. évi IV. törvény a Büntető Törvénykönyvről (old Penal Code)

1994. évi XXXIV. törvény a Rendőrségről

1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról (Act on Child Protection and Guardianship)

2011. évi CXC. törvény a nemzeti köznevelésről (Act on the National Public Eductaion)

2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről (Act on Administrative Offences)

2012.évi C. törvény a Büntető Törvénykönyvről (new Penal Code.)

2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról (Act on the Execution of Punishments, Preventive Measures, Coercive Measures and the Confinement; Execution of Punishments Act)

1430/2011 (XII.30.) kormányhatározat a Nemzeti Társadalmi Felzárkózási Stratégiáról, valamint végrehajtásának a 2012-2014. évekre szóló kormányzati intézkedési tervéről
1/2015. (I. 14.) EMMI rendelet a javítóintézetek rendtartásáról (Ministerial Order on the Reformatory Institutions)

Az Országos Választási Bizottság 57/2012. határozata
Annex to Parliamentary resolution no. 115/2003. (X.28), The National Strategy for Community Prevention
A Kormány 1744/2013. (X. 17.) Korm. határozata a Nemzeti Bűnmegelőzési Stratégiáról
2013. évi CCXLV. törvény egyes törvényeknek a gyermekek védelme érdekében történő módosításáról
1430/2011 (XII.30.) kormányhatározat a Nemzeti Társadalmi Felzárkózási Stratégiáról, valamint végrehajtásának a 2012-2014. évekre szóló kormányzati intézkedési tervéről

Scotland
Criminal Procedure (Scotland) Act (1995)
Anti-Social Behaviour Act (2004)

Slovenia
Act on the Criminal Code of Slovenia of 1995 (Slovenian CC)
Criminal Procedure Act of Slovenia (Slovenian CPA)

The Netherlands
Wetboek van Strafrecht (1881)

Eötvös Loránd Tudományegyetem
Állam és Jogtudományi Kar

Párkányi Eszter

A FIATALOK BŰNELKÖVETÉSÉNEK KONTROLLJÁT SZOLGÁLÓ INTÉZMÉNYRENDSZEREK EURÓPAI ÖSSZEHASONLÍTÓ VIZSGÁLATA

DOKTORI DISSZERTÁCIÓ

Tézisek

Konzulens: Prof. Dr. Lévay Miklós

tanszékvezető egyetemi tanár, Kriminológia Tanszék

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I. A kutatás célja

Az elmúlt 25 évben a gyermekjogok jelentős szerepet játszottak a gyermekkorról, valamint a gyermekek életébe történő beavatkozásról való gondolkodásunk alakulásában. Az Egyesült Nemzetek Szervezetének a szinte az egész világra kiterjedő konszenzust jelentő Gyermekek Jogairól Szóló Egyezménye (Gyermekjogi Egyezmény) mellett több regionális és nemzeti standard, iránymutatás és javaslat született a Gyermekjogi Egyezmény szellemiségének hangsúlyozására és beültetésének elősegítésére. Az Európai Unió legújabb irányelve *a büntetőeljárás során gyanúsított vagy vádlott gyermekek részére nyújtandó eljárási biztosítékokról* (ld. Az Európai Parlament és a Tanács (EU) 2016. május 11-én kelt 2016/800 irányelve) is ennek a célnak a megvalósításában kíván részt vállalni, a törvénysértést elkövető gyermekekkel szembeni gyermekbarát elbánás követelményének közösségi szintű megerősítésével. Ennek a dokumentumnak az elfogadása jó alkalmat teremt az Európai Unió tagállamai számára arra, hogy áttekintsék a hatályos jogszabályaikat és a tökéletesítés szándékával megvizsgálják, hogy a támogató rendszer következetesen szolgálja-e a gyermekek legfőbb érdekét.

A jelen vizsgálat célja, hogy strukturált szerkezetben áttekintse és összehasonlítsa, hogy az európai országok hogyan értelmezik és ültetik át a gyermekek fejlődésére vonatkozó tudásanyagot és nemzetközi gyermekjogi szabályokat. A kutatás mind a nemzeti jogalkotók, mind pedig az Európai Unió stratégiája számára hasznos információval szolgálhat a fiatalokat érintő büntető igazságszolgáltatási intézkedések fejlesztésének elősegítése területén. Annak érdekében, hogy egymás hibáiból vagy akár egymás sikereiből tanulhassunk fontos megérteni, hogy a fiatalkorúak büntető igazságszolgáltatási rendszerei hogyan működnek az egyes európai országokban, hogyan reagálnak a társadalmi változásokra, mi a szerepe az egyes intézményeknek és ezzel kapcsolatban milyen aggodalmak fogalmazhatók meg. A már megvalósult intézkedések és a nemzetközi szabályok átültetése terén még hiányzó lépéseket kutató elemzés értelmezhető a nemzeti jogalkotás jövő-orientált fejlődésének motorjaként.

a. A disszertáció szerkezete:

Az *I. Fejezet* a vizsgált kérdések körét, valamint a kutatás módszertanát mutatja be a fiatalkorúak büntető igazságszolgáltatási rendszereit vizsgáló nemzetközi összehasonlító irodalom tükrében, kiemelve a jogi és társadalmi különbségekből adódó korlátokat. Tonry és Chambers (2012) véleménye szerint az összehasonlító kutatás gátját a következő három probléma teremti meg ezen a területen: elsőként az intézmények felépítésében mutatkozó jelentős különbségek, amelyek még a felnőtt igazságszolgáltatásában létező eltéréseknél is komplikáltabbak. Az eltéréseket megteremtő jellemzők az emberi tényező ambivalenciájától, valamint a folyamatosan változó politikai nyomástól függően változnak, hol inkább a jóléti, hol pedig a megtorló intézkedéseket importálják a fiatalkorúak büntető igazságszolgáltatásába. Ez a jelenség rávezet a második problémára, amely szerint a változások a pillanatnyi politikai érdekek szolgálatában gyakran és gyorsan történnek, és a rendszerben nem, vagy csak korlátozott mértékben van jelen olyan állandó elem, amely az ellensúlyozná a változásokat. Ez a körülmény az adott időpontban rögzített információk érvényességét megkérdőjelezi, azonban a tudományos vizsgálat értékéből nem von le semmit. Azoknak, akik az elemzés eredményeit európai kutatási vagy intervenciós projektek

kidolgozására kívánják felhasználni, a fenti problémával számolniuk kell. A harmadik kérdés a kutató nézőpontja, amely a nemzetközi szempontból értelmezett fiatalkorúak büntető igazságszolgáltatási rendszereinek értelmezése során soha nem lehet semleges. Ennek következményeképpen egy kutató sem lehet megfelelően pártatlan egy ország igazságszolgáltatási rendszereinek leírásához és magyarázásához. Minden kutató a saját kulturális háttere és neveltetése által determinált nézőpontot követi és kötik a nyelvi korlátok is, amelyek minden kétséget kizáróan a nemzetközi kutatás legfontosabb korlátját képezik. Ebben a fejezetben igyekszem olyan stratégiát kialakítani, amely megfelelően reflektál ezekre a korlátokra.

A *II. Fejezet* rövid összefoglalást nyújt a fejlődési pszichológia perspektíváiról, valamint ennek a fejlődési kriminológiában való értelmezéséről. A fejezet betekintést nyújt a fiatalok bűnelkövetésének (fejlődési) kriminológiai értelmezésébe, valamint a különböző tudományterületek eredményei közötti kapcsolatba. Továbbá a kockázat kriminálpolitikai értelmezésének elemzése révén a tudományos eredmények és a társadalmi valóság közötti kapcsolattal is foglalkozom. Az itt bemutatott perspektívák és intézmények a IV. Fejezetben történő elemzés során visszatérnek majd.

A *III. Fejezet* a fiatalkorúakra vonatkozó intézményekkel szembeni nemzetközi jogi elvárásokat mutatja be, bemutatva magukat a szabályokat, valamint az európai szinten legproblematikusabb intézményeket. Bemutatásra kerül az Egyesült Nemzetek Szervezete és az Európa Tanács által kidolgozott vonatkozó szabályozás, valamint az Európai Uniónak a nemzetközi normák beültetésére vonatkozó szabályozási törekvései. A tagállamokban tapasztalható gyermekjogi helyzetképet a Gyermekjogi Bizottság záró észrevételeiben alkalmazott rendszerben elemzem. Az elemzés arra keresi a választ, hogy melyek azok a kulcskérdések, amelyek a fiatalkorúak igazságszolgáltatási rendszereiben az ENSZ és az Európa Tanács ajánlásai alapján gyermekjogi szempontból a legproblematikusabbnak számítanak. Az itt azonosított problematikus területek szolgálnak az V. Fejezetben történő intézmények elemzésének alapjául.

A *IV. Fejezet* a fiatalkorú elkövetőkre vonatkozó, európai büntető igazságszolgáltatási modellek részletes bemutatását tartalmazza. A Winterdyk (2002) által felállított összehasonlító keretrendszert alkalmazva hat ideáltipikus modellt különböztettem meg a kutatásban. Ezek elemzése reflektál a jogi felépítésben mutatkozó különbségekre, a rendszer jóléti vagy igazságügyi megoldások felé történő orientációjára, a meghatározott korú gyermekek kontrollját övező álláspontra, valamint azokra az eszközökre, amelyeket a fiatalok bűnelkövetésének megelőzése, megtorlása és csökkentése érdekében alkalmaznak. Külön figyelmet fordítok a rendszerek közötti hasonlóságokra és azokra a jellemzőkre, amelyek a különbözőséget meghatározzák. A holland rendszer jellemzőin keresztül mutatom be a módosított igazságügyi modell jellemzőit, míg a belga rendszer a jóléti modell, az angol rendszer a testületi modell, a skót rendszer a minimum intervenciós modell, a finn rendszer az igazságügyi modell, a magyar rendszer pedig bűnözéskontroll mintája lesz. Az elemzést 9 fő jellemző köré szerveztem, hogy az tiszta és összehasonlítható képet nyújtson a rendszerekről. A IV. Fejezetben bemutatott jellemzők ismerete szükséges az V. Fejezetben elemzett intézmények megértéséhez.

Az *V. Fejezet* célja, hogy bemutassa a különböző büntető igazságszolgáltatási modelleket képviselő országokban kialakított megoldásokat az európai országokban jellemző

gyermekjogi problémák kezelésére. A hat országban létrehozott intézmények jogi háttere a III. Fejezetben megállapított kulcskérdéseken keresztül kerül bemutatásra. Ebben a fejezetben részletesen elemzem a jogi szabályozást a következő területeken: (1) büntetőjogi életkori határok és a felnőtt bíróság előtti eljárás kérdése, (2) az alternatív szankciók jelentése, valamint alkalmazása a fiatalkorúak igazságszolgáltatási rendszereiben, (3) a szabadságelvonás különböző aspektusai, (4) a csekély súlyú cselekményekre adott intézményes reakciók, (5) diszkrimináció, (6) specializáció és képzés a fiatalkorúak igazságszolgáltatási rendszereiben.

Mint közép-európai kutató mindig fontosnak tartottam, hogy Közép-Kelet-Európát a vizsgálat kiemelt tárgyává tegyem, és vitassam a nemzetközi irodalomban erről a területről fellelhető, sokszor alapvetően hibás feltevéseket és értékítéleteket. A *VI. Fejezetben* erre teszek kísérletet, Csehország, Magyarország és Szlovénia fiatalkorú elkövetőkre vonatkozó büntető igazságszolgáltatási rendszereit hasonlítom össze a történelmi fejlődést és a jelenlegi szabályozást vizsgálva. Remélhetőleg az elemzés elválasztja majd az ezt a sokszor „poszt-szocialistának" vagy „kelet-európainak" nevezett földrajzi területet érintő tudományos „mítoszokat" a valóságtól. Tekintettel a fenti országokat érintő nyilvánvaló történelmi párhuzamosságra, az összehasonlítást meghatározó jellemzők főként az utóbbi 25 év jogalkotási eseményeire reflektálnak. Ezért ebben a fejezetben a büntethetőség alsó korhatárát, a csekélyebb súlyú valamint az elterelést érintő szabályozást, a fiatalkorúakat érintő büntetőeljárást és a jogalkalmazási gyakorlatot fogom összehasonlítani. Emellett a fiatalkori devianciákat és társadalmi szinten problematikus tendenciákat is igyekszem bemutatni, tekintettel arra, hogy a szakirodalom szerint ezek szintén hasonlóságokat mutatnak.

b. A kutatás hipotézisei:

1. *Az európai országok jelentős eltéréseket mutatnak a fiatalkorú elkövetőkre vonatkozó kockázat értelmezése, valamint az ennek kontrollját szolgáló intézményrendszer kialakítása tekintetében. Ez a gyermek fejlődésének valamint a gyermekek jogainak eltérő értelmezésével magyarázható.*

A meghatározó kriminálpolitikai irány az utóbbi évtizedekben jelentősen megváltozott. Az 1990-es években Nyugat-Európában domináló igazságszolgáltatási stratégia arra épített, hogy egy személy meghatározható az általa a társadalomban képviselt kockázat alapján. Azok a személyes és környezeti rizikófaktorok, amelyek az adott személy életét negatívan befolyásolják értelmezhetőek a közbiztonságot veszélyeztető kockázatként is. Az ezredfordulót követő évtized közepétől a fiatalkorúak büntető igazságszolgáltatása normalizálódni kezdett Nyugat-Európában, ám ez a változás nem terelte vissza a jóléti mederbe a szakpolitikát. Sokkal inkább hegeli megoldásként jellemezhető a fordulat, amelyben az eseményeket jelentősen leegyszerűsítve, a jólétiség tézisére válaszoló punitív antitézisből e kettő szintézise bontakozott ki. A szintézis mindkét tézis által megfogalmazott problémákra reagálni kíván, újraértékelve a látszólag egymásnak ellentmondó véleményeket. Az új tézis szerint, bár a közbiztonság kiemelkedő értéket képvisel a társadalomban és ezért garantálni kell, a fiatalkorú elkövetők egy bonyolult életszakaszban vannak, amelyben a bűnelkövetés inkább csínytevésként, mint a visszaeső bűnelkövetővé válás komoly

kockázataként értelmezhető. A fejlődési kriminológiai kutatások által táplált változások a kriminálpolitikát is a megfelelő nevelés irányába mozdították el, amelynek eszköze az életkort figyelembe vevő, tudományos bizonyítékokon alapuló, a fiatalok összetett problémáit komplex módon kezelő módszerek alkalmazása lett. Ezt az időszakot nem csupán a nemzeti jogalkotásban tapasztalható gyors változások jellemezték, hanem a nemzetközi téren tapasztalható gyors változások is. Több meghatározó nemzetközi dokumentum született a 2010-es évek elejéig, amelyek a fiatalkorúak büntető igazságszolgáltatásának kérdését a fejlődési elméletek szempontjából közelítették meg. Példa erre a Gyermekjogi Bizottság 2005-ben kiadott Átfogó Kommentárja a gyermekjogok végrehajtásáról koragyermekkorban, a 2007-ben kiadott Általános Kommentár a gyermekek jogairól a fiatalkorúakat illető igazságszolgáltatásban, az Európa Tanács Rec(2003)20 számú ajánlása a fiatalkori bűnelkövetés kezelésének új módszereiről és a fiatalkorú büntetőelkövetőkre vonatkozó igazságszolgáltatás szerepéről, a Rec(2006)19 számú ajánlás a pozitív szülői nevelés elősegítéséről, a Rec(2008)11 számú ajánlás a fiatalkorú elkövetőket érintő szankciók és intézkedések alkalmazásáról szóló Európai Szabályokról, valamint az Európa Tanács Miniszteri Bizottságának 2010-ben kiadott iránymutatásai a gyermekbarát igazságszolgáltatásról. A nemzetközi fókusz soha nem volt még ilyen intenzív a fiatalkorúak büntető igazságszolgáltatásában és tágabban a fiatalkorú elkövetés megelőzésének színtereként értelmezett gyermekvédelemben megvalósuló gyermekjogokban.

Ebben az összehasonlító elemzésben arra voltam kíváncsi, hogy a kockázat értelmezése és a büntető igazságszolgáltatási intervenció módja hogyan változtak az elmúlt évtizedben. A kutatás során arra kerestem a választ, hogy mi teremti meg a „kockázatot" a fiatalkorú elkövetők esetében az egyes országokban és ez hogyan befolyásolja az intézményesített kontroll alkalmazását ezzel a célcsoporttal szemben. Ebben a tekintetben két fontos tényező áll egymással szemben az igazságszolgáltatás területén: a közbiztonság és az emberi jogok, amelyeket kutatási eredmények alapján határozunk meg. Egyrészt a közbiztonság vezető politikai frázissá vált és fontos rendészeti kérdéssé vált az európai társadalmakban. A bűncselekmények fenyegetésével szemben kialakult, és támogatottá vált a megfigyelés és a kontroll a mindennapi élet színterén is. A fiatalkorúak büntető igazságszolgáltatásának hagyományos intézményei, akár szándékos átalakítás eredményeként akár ennek hiányában, a kockázatkezelés intézményeivé váltak, amelyeknek célja a fiatalkorú elkövetők kontrollja valamint a visszaesés kockázatának csökkentése. Ezek az intézmények a bűnalkalmak csökkentésére való törekvések révén fontos alapot teremtettek a közterületen történő elkövetés megelőzésének is. Ezek az intézmények adatokat is gyűjthetnek azzal a céllal, hogy a kockázat „diagnózisát" fel tudják állítani a korábban meghatározott rizikófaktorok kombinálásával. Egyes országokban a kockázat értékelésének a megfelelő kontroll- vagy segítő mechanizmus meghatározásában is döntő szerepe van, figyelmen kívül hagyva a döntés érzelmi oldalát, így például a bizalom kérdését. Az összehasonlító vizsgálat, amely a „kockázatosként" értelmezett faktorokat valamint így minősített személyek kezelését célozza, a kockázat fogalmát európai perspektívában igyekszik elhelyezni, rámutatva arra, hogy az egyes országok különböző módon értelmezik ezt a kérdést a gyermekek fejlődését érintő tudományos eredmények és a gyermeki jogok tükrében.

Másrészt fontos látni, hogy hogyan értelmezik a fiatalkorúak büntető igazságszolgáltatási rendszerei azoknak a gyermekek a magatartását, akik általános

értelemben alacsony kockázatot képviselnek. Úgy tűnik, hogy ezen a területen a gyermekek fejlődésére koncentráló kutatások és az absztrakt gyermekjogi követelmények támogatták egymást az elmúlt évtizedekben mind a büntető igazságszolgáltatásban, mind pedig a gyermekvédelemben. Mindkét rendszer racionálisan szemléli a gyermekek viselkedését és jellemzőit: a sebezhetőséget, mint a gyermekkor általános jellemzőjét hangsúlyozzák, ugyanakkor nem becsülik alá a gyermek képességeit és akaratát. A gyermek nem az eljárás kiszolgáltatott tárgyaként jelenik meg, hanem a társadalom cselekvő tagjaként, akit meg kell érteni és informálni kell az eljárásról az életkorának megfelelő módon. A bűncselekményt elkövető gyermek nem csupán bűnelkövető, hanem a saját életkorának, képességeinek, családi hátterének és szociális státuszának képviselője. A bíróság ítéletének érthetőnek és elfogadhatónak kell lennie a számára, és a büntetés, intézkedés vagy egyéb kezelés tekintettel kell hogy legyen az igényeire. Általánosságban elmondható, hogy azok az országok, amelyek tudományosan alátámasztott programokkal dolgoznak, amelyek a gyermek fejlődését figyelembe veszik és támogató módon reflektálnak rá, a nemzetközi gyermekjogi elvárásoknak megfelelően alakítják az igazságszolgáltatási rendszerüknek ezen területét. A beavatkozás és egyéb, a fiatalkorú szükségleteire reagáló programok, így például a szabadságelvonás során alkalmazott programok, egy sor gyermekjogi követelménynek tesznek eleget – tekintet nélkül arra, hogy ez céljuk-e vagy sem. A gyermek számára megfelelő körülmények megteremtése biztosítja az alapvető gyermeki jogok érvényesülését is az oktatáshoz való jogtól az egészséges környezethez való jogig. Doktori értekezésemben azt vizsgáltam, hogy az elméleti keretek hogyan jelennek meg az egyes (büntető) igazságszolgáltatási rendszerekben, figyelembe véve a kockázatkezelés szempontja által okozott eltéréseket.

2. *A Közép-európai országok igazságszolgáltatási rendszerei sok tulajdonságukban hasonlítanak, ami a közös történelmi gyökereiknek köszönhető. A jelenleg működő igazságszolgáltatási rendszereket ugyanakkor elsősorban a politikai célok, a kultúra, valamint a gyermekvédelem és igazságszolgáltatás közötti együttműködés minősége határozzák meg, nem pedig az ország földrajzi elhelyezkedés.*

A kutatás utolsó részében Csehország, Magyarország és Szlovénia fiatalkorúakra specializálódott büntető igazságszolgáltatási rendszereit vizsgáltam. Ezeket az országokat a szakirodalom gyakran „poszt-szocialista" vagy „kelet-európai" rendszerekként említi.
Ezek a kifejezések arra engednek következtetni, hogy a) ezeknek az országoknak a fiatalkorúakat érintő igazságszolgáltatási rendszereiben meghatározó hasonlóságok fedezhetők fel, b) ezek a hasonlóságok a közös Közép-kelet-európai jogi-történelmi valamint társadalmi sajátosságokra vezethetők vissza. Az e fejezetben vizsgált három országot kétség kívül hasonló hatások érték a XIX. és XX. Század folyamán: az Osztrák-Magyar Monarchia és később a Szovjetunió befolyása alatt a szocialista blokk részeként az élet több területét érintő, hasonló folyamatok bontakoztak ki. A közös történelmi gyökerek valamint az Európa e részét összekapcsoló szolidaritás emlékét elsősorban a művészetek, az irodalom valamint az építészet őrzik. Bár létrejöttek a régióra jellemző, tipikus társadalmi helyzetek, így például a panelépületekből épült városnegyedek vagy az alkoholfogyasztás, mint társadalmi probléma (Junger-Tas, 2012), amelyek Prágában, csakúgy, mint Budapesten vagy Ljubljanában hasonló élethelyzeteket idéznek elő, az is bizonyított tény, hogy a bűnözési helyzet nincs hatással a

kriminálpolitikára. A disszertációnak ebben a részében arra keresem a választ, hogy az erre a földrajzi területre használt kifejezések, úgy mint „poszt-szocialista" vagy „kelet-európai", valóban az összes igazságszolgáltatási rendszerben létező közös jellemzőkre utalnak-e.

A történelmi perspektívára reflektálva tisztázni kell, hogy az Osztrák-Magyar Monarchiában soha nem volt hatályban az egész területre érvényes, egységes jogi szabályozás, aminek elsősorban az volt az oka, hogy a Magyar Királyság és az ehhez tartozó területek viszonylagos önállóságot élveztek a Monarchiában. A kulturális-politikai értelemben vett elválás a Monarchia országai között az első világháború után kezdődött meg, amikor független nemzetállamok jöttek létre az egykori birodalom területén. Az így „felszabadult" nemzetek elkezdték megteremteni saját nemzeti jogukat, kriminálpolitikájukat és identitásukat. Ezt a folyamatot a második világháború szakította meg, amelyet követően a régió a Szovjetunió érdekterülete lett. A Szovjetunió ideológiai befolyásának ugyan voltak nyomai a deviancia és bűnelkövetés jelenségének tudományos értelmezésében és az erre reagáló jogalkotás területén is, ám a fenti országok egymástól függetlenül alakították a jogrendszereiket. Ez főként Szlovéniára igaz, amely Jugoszlávia részeként viszonylag korán szakított a Szovjetunió politikai-ideológiai szemléletével. Az 1990-es évek rendszerváltásait követően az igazságszolgáltatási rendszerek fejlődése, kifejezett külső nyomás és fölérendelt politikai szövetség hiányában, valóban függetlenül kezdett el fejlődni. Ez a kijelentés az Európai Uniós tagsággal sem vesztette érvényét, hiszen a fiatalkorúak büntető igazságszolgáltatásának kérdése nem tartozik a kiemelt ügyek közé, így az Európai Uniónak viszonylag kevés érdeke fűződik a tagállamokra kötelező szabályok előírásához ezen a területen. Következésképpen Közép-Európa országai szabadon változtathatják és újrateremthetik a fiatalkorú elkövetőkre vonatkozó büntető igazságszolgáltatási intézményrendszerüket. Az új intézmények kialakítása vagy átvétele során nem egy közös igazságszolgáltatási rendszerben létrehozott bázisra építenek, hanem egy olyan rendszerre, amelyet egy olyan közös elméleti-tudományos alapra építő államközösségben hoztak létre, amelynek intézményei az elmúlt száz évben kulturális, gazdasági és politikai értékek és érdekek mentén meghatározott szerves fejlődésen mentek keresztül.

Ennek megfelelően a három ország egymástól eltérő módszereket választott fiatalkori bűnelkövetés kezelésére. A ma létező fiatalkorúakkal foglalkozó intézményrendszerek jelentős különbségeket mutatnak az életkori határok, a meghatározó intézmények, a kriminálpolitikai célterületek, valamint az ítélkezési gyakorlat kérdésében. Az eltérések mentén arra lehet következtetni, hogy a három rendszer három eltérő intézményrendszeri modellhez tartozik, és az esetleges hasonlóságoktól eltekintve a Gyermekjogi Egyezmény érvényre juttatásának folyamatában is eltérő szinten állnak. Ebben az értelemben úgy tűnik, hogy nincs megfelelő bizonyíték a „poszt-szocialista" attitűd létezésére a közép-európai országok fiatalkorúakra vonatkozó igazságszolgáltatási rendszerében.

II. A kutatásban vizsgált kérdések köre és a kutatás módszerei

a. A kutatásban vizsgált kérdések köre

A nemzetközi összehasonlító szakirodalomban fellelhető összehasonlító perspektívák jelentősen eltérő stratégiák mentén alakultak ki: bár mindegyik az egyes, fiatalok bűnelkövetésére reagáló intézmények vizsgálatát tűzte ki célul, az összehasonlítás maga ritkán

vállalkozik mélyebb vizsgálatra, vagy ha mégis, akkor a vizsgált jelenségek körét szűkíti. Azok a szerzők, akik az intézményrendszereket átfogóan vizsgálják, mint Winterdyk (2002) vagy Cavadino és Dignan (2006) az intézményrendszerek főbb jellemzőire koncentrálnak, míg mások, például Muncie és Goldson (2006) a jogi és kriminálpolitikai kérdések mélyebb vizsgálatára vállalkoznak, azonban ezt csupán néhány intézmény szempontjából teszik, és nem az egész rendszerre vonatkozóan. A szerzők egy része modellekkel vagy az országok osztályozásával egyszerűsíti le az elemzést (pl. Winterdyk, 2002, Cavadino & Dignan, 2006, Junger-Tas & Decker, 2006), míg mások az adott intézmények rendszerbeli szerepét az országok kategorizálása nélkül hasonlítják össze (pl. Killias, Redondo, & Sarneczki, 2012; Muncie & Goldson, 2006). A megközelítésben mutatkozó különbségek az eltérő célokra vezethetők vissza: amennyiben az ország földrajzi elhelyezkedésének a fiatalkorúak igazságszolgáltatásának kialakításában játszott szerepét kívánjuk vizsgálni, úgy a földrajzi elhelyezkedés szerinti osztályozás elengedhetetlen a sikeres elemzéshez, míg a kortárs kriminálpolitikai trendek vizsgálatakor erre nincs feltétlenül szükség. Ezeknek az összehasonlító műveknek a vizsgálata révén betekintést nyertem az összehasonlító művek korlátaiba és a megközelítés és a módszertan területén tapasztalható fejlesztési lehetőségekbe is. A következő összehasonlító megközelítést alkalmazó műveket tekintettem át:

- Területi megközelítés (pl. Junger-Tas & Decker, 2006)
- Filozófiai megközelítés (pl. Albanese & Dammer, 2013)
- Intézményi megközelítés
  a) Klasszikus kettős felosztás
  b) Rendszerszintű (pl. Winterdyk, 2002)
  c) Kriminálpolitikára alapozó (pl. Cavadino & Dignan, 2006)
- Kritikai megközelítés (pl. Goldson & Muncie, 2006)

A fenti, a rendszer földrajzi elhelyezkedését, a meghatározó filozófiáját, a jogi felépítését és kriminál- és szociálpolitikai irányultságát alapul vevő osztályozások összefoglaló elemzése rávilágít a fiatalkorú elkövetőkre vonatkozó igazságszolgáltatási rendszerek elméleti kialakításának összetettségére. Ennek az összetettségnek az átfogó vizsgálata meghaladná egy doktori disszertáció terjedelmét, ezért a következő módon szűkítettem a vizsgálatot:

1. Elsőként, a disszertáció célja kizárólag a fiatalok bűnelkövetésére adott intézményesített reakciók vizsgálata, ami kizárja az informális kontroll vizsgálatát. Ennek az az oka, hogy az elemzés fókuszában a gyermekjogi szabályok érvényesülése áll, ami alapvetően meghatározza a dolgozat normatív természetét. A Gyermekjogi Egyezmény és egyéb, a fiatalok bűnelkövetésére vonatkozó intézményes reakcióról szóló dokumentumok elsősorban, bár nem kizárólag, a részes állami intézményekre rónak kötelezettségeket. Mivel a bűnelkövetésre adott intézményes reakció állami feladat, amit nemzeti szintű jogszabályok szabályoznak, és a fiatalkorúak igazságszolgáltatása tipikusan ennek a rendszernek a részét képezi vagy ezzel kapcsolatban áll, a fiatalkorúak igazságszolgáltatását érintő gyermekjogi elvárások is elsősorban az államokat célozzák.
2. Az összehasonlításban elemzett országok számának korlátozása tovább szűkítette a disszertáció vizsgálati körét. A célországok kiválasztása során az volt az elsődleges cél, hogy az elméleti keretrendszerek és a PhD kutatás keretében vizsgálható országok egymáshoz illeszkedjenek. Az előző pontban említetteknek megfelelően a kutatás a

fiatalok bűnelkövetésére adott formális, intézményesített reakciók vizsgálatára korlátozódik. A vizsgálat megvalósításához az intézményi megközelítés tűnt a legcélszerűbbnek. Ezen belül a Winterdyk (2002) rendszerszintű megközelítését vettem alapul, mert egy ezen alapuló elemzés jól szolgálja az adott rendszerek részletes bemutatását, emellett pedig egy szempontrendszert is felállít az összehasonlító vizsgálathoz. A Winterdyk által felállított keretrendszer alapján a disszertációban hat igazságszolgáltatási modellt mutattam be részletesen, konkrét országok példája alapján. A következő országokat vizsgáltam az egyes modellek bemutatásánál: (1) minimum intervenció modellje: Skócia, (2) jóléti modell: Belgium, (3) testületi modell: Anglia, (4) módosított igazságügyi modell: Hollandia, (5) igazságügyi modell: Finnország, (6) bűnözéskontroll modell: Magyarország.

Fontos kiemelni, hogy a modellek nem az egyes országok, hanem az ideáltipikus rendszerek bemutatására szolgálnak, amelyek az organikus fejlődés és kriminálpolitikai trendek mentén alakultak ki. A modelleket képviselő országok a szakirodalom alapján kerültek kiválasztásra (Winterdyk, 2002; Pruin, 2010). Ennek következményeképpen a fenti országok ismertetett rendszerei nem minden tulajdonságukban, csupán meghatározó jellemzőikben egyeznek meg a modell elvárásaival.

Az elméleti modellek lényegének részletes feltárása érdekében felhasználtam és egyes elemeiben átalakítottam a Winterdyk (2002) által alkalmazott elemzési szempontokat: az „általános tulajdonságok" helyett az egyes modellek „általános filozófiáját" vizsgáltam, valamint hozzáadtam két elemzési szempontot, a „jogi felépítést" és a „tipikus eszközöket". A rendszer „általános filozófiájának" vizsgálata azért fontos, mert lehetőséget nyújt a gyermekeket érintő gondolkodás és kriminálpolitika, valamint a tipikus intézmények alakulásának történeti fejlődésének áttekintésére. Az alapvető, jogi felépítésre vonatkozó ismeretek összefoglalása arra szolgál, hogy bemutassa, hogy a rendszernek hogyan kellene működnie, esetenként akár a valósággal ellentétben. Az elemzés során a következő szempontokat vizsgáltam: (1) általános filozófia, (2) a bűnelkövetés értelmezése, (3) a beavatkozás célja, (4) a rendszer célja, (5) rendszer feladatai, (6) jogi felépítés, (7) meghatározó intézmény, (8) meghatározó szakma, (9) tipikus eszközök. Az ezekre vonatkozó várakozásokat az 1. táblázat tartalmazza.

3. Végül, a vizsgálatot a fiatalok büntető igazságszolgáltatási rendszereinek jogi és gyakorlati nézőpontjának vizsgálatában a gyermekjogi elvárások teljesítésére és a gyermekek fejlődését érintő kérdésekre koncentráltam. Ennek során két különböző stratégiát alkalmaztam: a fiatalkorúak igazságszolgáltatási modelljeinek bemutatása során igyekeztem kiemelni, hogy mennyiben felelnek meg ezek az egyes rendszerek a fejlődési elméletek és kutatások által megkívánt arculatnak, míg az egyes intézmények összehasonlítása során ezeket a gyermekjogi szabályok érvényesülésének tükrében vizsgáltam.

a. A kutatás módszerei és a nemzetközi összehasonlító vizsgálat korlátai

A doktori kutatás, valamint a nemzetközi összehasonlítás korlátait figyelembe véve igyekeztem megtalálni az egyensúlyt az elméleti lehetőségek és a gyakorlati korlátok között a

dolgozat tudományos színvonalának emelése érdekében. A szakirodalom áttekintését rövid és hosszú tanulmányutakkal egészítettem ki. A kutatás részeként négy országban jártam Magyarországon kívül 2011. szeptember 4. és 2014. szeptember 15. között. Rövid tanulmányúton (2 hét és egy hónap közötti időtartam) jártam Finnországban, Szlovéniában és Csehországban, míg Hollandiában 4,5 hónapot töltöttem a Netherlands Institute for the Study of Crime and Law Enforcement intézetében és egy évet gyakornokként a Defence for Children International-ECPAT Alapítványnál. A tanulmányutak során interjúkat készítettem helyi egyetemi kutatókkal és gyakorlati szakemberekkel, gyermekvédelmi, valamint fiatalkorú elkövetőkkel foglalkozó intézményeket látogattam meg. Az interjúk azt a célt szolgálták, hogy (1) a nemzetközi szakirodalomból szerzett információkat pontosítsam, (2) a már rendelkezésre álló szakirodalmat bővítsem, és (3) további információkat gyűjtsek a kulturális és politikai kontextusról, amelyben az egyes intézmények működnek.

A kutatás során kiemelt figyelmet szenteltem a nyelvi korlátoknak, és a le nem fordítható, vagy kulturálisan meghatározott kifejezések angol fordítása által okozott torzításoknak. Annak ellenére, hogy a tudományos szakirodalomban jelentős mennyiségű, a fiatalkorúak igazságszolgáltatásával foglalkozó forrás létezik angol nyelven, az anyanyelvi szöveg fordítása sokszor önkéntelenül is félrevezeti az olvasót. Erre való tekintettel igyekeztem a fordítás átvétele mellett az egyes kifejezések és intézmények valós tartalmát is vizsgálni.

1. Táblázat. A fiatalkorúak igazságszolgáltatási modelljeinek jellemzői

	MINIMUM INTERVENCIÓS MODELL	JÓLÉTI MODELL	TESTÜLETI MODELL	MÓDOSÍTOTT IGAZSÁGÜGYI MODELL	IGAZSÁGÜGYI MODELL	BŰNÖZÉS-KONTROLL MODELL
Általános filozófia	•Informális rendszer • Lehetőleg a formális intervenció mellőzése •Cél a reszocializáció	• Informális rendszer • Általános jelzés • Személyre szabott kezelés • Határozatlan idejű ítélet	• Adminsztratív döntéshozatal • Elterelés a büntető igazságszolgáltatásból	• Méltányos eljárás • Informális rendszer • Kettős nyomtáv: a csekély súlyú cselekményért elterelés, a súlyos cselekményért büntetés	• Méltányos eljárás • A gyermekjogok érvényesítése • Elterelés a büntető igazságszolgáltatásból	• Reform ellenes, punitív • Bizonyítékok által vezérelt • Felelőssé tétel • Korai, következetes intervenció
A bűnelkövetés értelmezése	Az ember alapvetően jó	Patologikus, a környezet által meghatározott	Disszociális	Korlátozott egyéni felelősség	Büntetést érdemel	Büntetést/ bebörtönzést érdemel
A beavatkozás célja	nevelés	Megfelelő kezelés biztosítása (*parens patriae*)	Visszatartás	Szankcionálás, megfelelő kezelés biztosítása	Szankcionálás	A társ. védelme, megtorlás, elrettentés
A rendszer célja	Nevelés	Az egyéni szükségletek kielégítsée	A kriminálpolitika végrehajtása	Az emberi jogok érv./ Egyéni szüks. kielégítés	Emberi jogok érv./ Elkövető megbüntetése	A rend fenntartása
Feladatok	Segítség és nevelés	Diagnózis	Rendszerszintű beavatkozás	Diagnózis/ büntetés	büntetés	Szabadság elvonása
Jogi felépítés	alternatív	jóléti	jóléti	jóléti	igazságügyi	Jóléti/ig.ügyi
Meghatározó intézmény	Közösségi, megánszemélyek, iskola	Szociális munka	Együttműködés a szolgáltatók között	Jogrendszer és szociális munka	jogrendszer	jogrendszer
Meghatározó szakma	Pedagógus	Gyermekvédelem	Büntető igazságszolg.	Jogász, gyermekvédelem	Jogász	Jogász, büntető igazságszolg.
Tipikus eszközök	Amennyiben van, úgy gyermek-védelmi intézkezés	Gyermekvédelmi (nem zártintézeti) intézkedés	Közösségi szankciók	• Tradicionális szankciók • Amennyiben szükséges, gyermekvédelmi szankció	• Tradicionális szankciók • Resztoratív ig.szolg.	• short sharp shock • boot campek • zero tolerancia • közelező minimum büntetés • megszégyenítés • kriminalizáció • szülők feletti kontroll

Forrás: Winterdyk (2002) rendsznem zártintézeti ere alapján készült

III. A disszertáció főbb következtetései

1. *Az európai országok jelentős eltéréseket mutatnak a fiatalok bűnelkövetése terén értékelt „kockázat" értelmezésében, valamint ennek kriminálpolitkai értékelésében. Ez a jelenség a gyermekek fejlődésének eltérő módon történő figyelembe vételével és a gyermekjogi szabályok eltérő értelmezésével magyarázható.*

1.a. A „kockázat" értelmezését érintő általános megfigyelések

Az egyes modellek filozófiai hátterét a jelen kutatásban történeti szempontból vizsgáltam. Ez a perspektíva segített annak megértésében, hogy az egyes gyermekeket (fiatalkorúakra vonatkozó) igazságszolgáltatási rendszerek mai képe hogyan alakulhatott ki, mely szemléletmódokat és intézményeket támogatták, és melyeket utasították el, mely tulajdonságaik maradtak statikusak, és mely területek tartják mozgásban a változásokat. Érdekes tapasztalat volt megfigyelni, hogy lényegében az összes vizsgált igazságszolgáltatási rendszer fiatalkorúakkal foglalkozó része az ún. gyermekmentő („child-saver") mozgalom által megalapozott reformgondolatokból nőtt ki a XX. század elején, közülük négy pontosan ugyanabban az évben. A jogrendszerek eltérő sajátosságaiból és a helyi adottságokból adódó rendszerbeli különbségek már ebben a kezdeti időszakban is léteztek. Ezt követően a XX. századi politikai, gazdasági és társadalmi változások és erőfeszítéseik is nyomot hagytak a rendszereken. Néhány ideológiai és gyakorlati változás több országban is jelentkezett párhuzamosan, így például a szakirodalom által büntető fordulatnak („punitive turn") nevezett időszak az 1990-es években, amelynek nagy hatása volt a fiatalkorúak igazságszolgáltatási rendszereinek fejlődésére Nyugat-Európában. Magyarország, poszt-szocialista országként, ebben az időszakben még csak ébredezett „téli álmából", ami a szakpolitikai és jogalkotási igényeket az alapvető intézményi struktúrák kialakítására szolgáló jogszabályok megalkotására szorította. A kockázatkezelésre helyezett hangsúly, amely a nyugat-európai országok rendszereit az 1990-es évek óta meghatározza, csupán az utóbbi években érte el Magyarországot.

A fiatalkorúak igazságszolgáltatási rendszereinek céljaként felfogott kockázatkezelés kiemelt fontosságú terület a vizsgált országokban. Kivétel ez alól Finnország, ahol fiatalkorú elkövetők nagy részét a gyermekvédelembe tereli a rendszer, és így gyermekvédelmi támogatásban részesülnek, nem pedig olyan intervencióban, amely kimondottan az ismételt bűnelkövetés megelőzését szolgálja. A többi országban nem feltétlenül határozzák meg a „kockázat" általános fogalmát. A belga törvény kiemeli, hogy resztoratív módszereket kell a fiatalkorúak igazságszolgáltatásában alkalmazni, amellyel a kockázat-központú beavatkozástól eltérő elvárást fogalmaz meg. Emellett azonban alkalmaz a kockázatra reagáló intervenciót, és a visszaesés kockázata, főként a súlyos cselekményeket elkövető fiatalkorúak tekintetében, meghatározó részét képezi a rendszernek, tekintettel arra, hogy a társadalom biztonságának védelme jogszabályban meghatározott cél. A magyar rendszerben még csak néhány éve létezik a kockázat koncepciója. Ennek eredményeként, ahogy az Európában általános, a pártfogó felügyelői szolgálatok feladata lett a visszaesés kockázatának értékelése egy speciális értékelési séma segítségével. Ez az eszköz alkalmazható bűncselekményt el nem követő gyermekek esetében is, így például egy szabálysértés elkövetése esetén, amikor a

pártfogó felügyelői szolgálat a gyermekvédelmi szerv kifejezett kérésére értékeli a bűnelkövetés kockázatát. Ezek a lépések arra engednek következtetni, hogy a magyar rendszer is a kockázatot középpontba állító kriminálpolitika felé halad. Emellett Magyarország olyan büntető igazságszolgáltatási rendszert épített ki a fiatalkorú elkövetők számára, amelynek alacsony a toleranciaküszübe, és fokozott kontrollt vár el. Egy ilyen rendszerben, amelyben minden bűncselekményt és anti-szociálisnak ítélt magatartást fenyegetésként értelmeznek, és keményen megtorolnak, a kockázatelemzés célja csak annyi lehet, hogy az elkövetők csoportjait megkülönböztesse, ám a célszerű intervenció kiválasztására nem lesz alkalmas. Angliában a kockázatelemzésre szolgáló eszközöknek meghatározó szerepe van az igazságszolgáltatás arculatának alakításában, éppen ezért rengeteg kritika övezi ezeket az eszközöket. Skóciában és Hollandiában a kockázatelemzés eszközei a fiatalkorú elkövetők osztályozását szolgálják, és több különböző intervenciós program áll rendelkezésre az ismételt bűnelkövetés megelőzésére. Az alkalmazott szemlélet és módszer alapján három fontos törésvonal határozza meg a kockázat értékelésének természetét az egyes modellekben: a gyermek életkora, az elkövetett cselekmény súlya, valamint az elkövető szociális helyzete és társadalmi státusza.

Általános érvényű megállapításként elmondható, hogy a 16 évnél fiatalabb bűnelkövetőket az igazságszolgáltatási rendszerek megkülönböztetik a 16 éves kort betöltött társaiktól. Belgiumban és Hollandiában a tizenhatodik életévüket betöltött elkövetők jogi megszorítások mellett ugyan, de akár a felnőtt bíróság előtt is felelősségre vonhatóak, míg Skóciában a joggyakorlat ezt a korosztályt már nem tereli át a children's hearing rendszerébe, hanem a felnőtt igazságszolgáltatásban tartja. Az idősebb fiatalkorúak a fiatalkorúak igazságszolgáltatási rendszereiben is súlyosabb következményekre számíthatnak, mint fiatalabb társaik. Ez az életkor kétségkívül egy nem hivatalos határvonalat képez a fiatalkorúak európai igazságszolgáltatási rendszereiben, elválasztva egymástól a „csínytevő gyermekeket" és a „bűnelkövető kamaszokat". Míg az első csoport viszonylag alacsony kockázatot jelent, a második csoportba tartozók sokszor a felnőtt elkövetőkkel azonos megítélésben részesülnek.

Az elkövetett cselekmény súlya nyilvánvalóan befolyásolja az alkalmazott büntetés vagy intézkedés természetét. Ugyanakkor úgy tűnik, hogy a súlyos bűncselekményeket elkövető fiatalokat több rendszer felnőttként kezeli, tekintet nélkül az életkori sajátosságaikra vagy a legfőbb érdekükre. Angliában 10 éves kortól lehetőség van a bűnelkövetők elleni eljárás áttételére felnőtt bíróság elé, a helyi és nemzetközi szakemberek tiltakozása ellenére is. A gyakorlat azt mutatja, hogy ezekben az eljárásokban a gyermekek jogainak érvényesülése korlátozott, vagy egyáltalán nem valósul meg. Ugyan Belgiumban és Hollandiában az ügyek áttétele csak meghatározott életkortól lehetséges, a gyermeki jogok sérelme még így is viszonylag gyakori ezekben az ügyekben (ld. V. Fejezet, 1.2.). A súlyossági skála másik végén a csekély súlyú cselekményeket elkövető gyermekek elterelése megoldott mind a hat, általam vizsgált rendszerben, általában már az eljárás ügyészségi fázisában, amennyiben nem valószínű, hogy ismételten bűncselekményt fognak elkövetni. Feltételhez kötött elterelés, valamint a beavatkozás elmaradása ugyancsak lehetséges eszközök, ugyan nem minden ország alkalmazza őket. Következésképpen elmondható, hogy mind a kriminálpolitika, mind pedig az intézményrendszer maga enyhébb elbánásban részesíti a csekély súlyú bűncselekményeket elkövető fiatalkorúakat, az igazságszolgáltatáson kívüli nevelést,

támogatást alkalmazva, vagy akár ezektől való eltekintéssel. Ezzel szemben a súlyos bűncselekményeket elkövető fiatalok az akár a felnőtt igazságszolgáltatásban végrehajtott szigorú kontrollintézkedésekre számíthatnak. A bűnözéskontroll modelljére például szolgáló magyar rendszer kivételt képez ez alól: a kriminálpolitika által támogatott megtorló és elrettentő büntetések következményeképpen a fiatalkorú elkövetők szinte az elkövetett cselekmény súlyára tekintet nélkül, vagy akár bűncselekmény elkövetése hiányában is kockáztatják például a szabadságuk elvonásának valamilyen formáját.

Az elkövető társadalmi helyzete és az általa képviselt rizikó közötti kapcsolat értékelése talán a legproblematikusabb kérdés a jelenkori igazságszolgáltatási rendszerekben, és legalább olyan fontos kérdés a fiatalkorúak igazságszolgáltatásában, mint a felnőttek tekintetében. A nemzetközi irodalomból ismert longitudinális kutatások által feltárt rizikófaktorok többsége a rossz szociális helyzettel áll kapcsolatban, úgy, mint a deprivált városnegyedek, a közösségek hiánya, a bűnelkövető barátok, az aluliskolázottság, a szülők drog- vagy alkoholproblémái, vagy a munkanélküliség. Nem meglepő, hogy a kockázatelemzések az alacsonyabb társadalmi státuszú fiatal elkövetők esetében magasabb visszaesési rizikóval számolnak. Ennek az a következménye, hogy ez a csoport nagyobb valószínűséggel lesz alanya a kontrollt szolgáló intézkedésnek vagy igazságszolgáltatási intervenciónak és ezzel együtt megbélyegzésnek. Sokszor az egyetlen probléma, ami ezt előidézi a rossz család vagy közösség ahova a gyermek született. A probléma persze nem ilyen egyszerű, amit a diszkriminatív jogalkotásról és gyakorlatokról, valamint a jelenkori társadalmak kulturális és gazdasági törésvonalairól szóló széleskörű szakirodalom is jelez. Minden fiatalkorúakra vonatkozó igazságszolgáltatási rendszerben megtalálhatóak a deprivált és szegény fiatalkorúakra vonatkozó diszkriminatív intézkedések. Az igazságszolgáltatásban intézményesült diszkrimináció megerősíti a többségi társadalomtól eltérő csoportoktól való félelem érzését, és mint ilyen, elsősorban a Roma és bevándorló fiatalokat célozza.

Nyilvánvalónak tűnik, hogy bár az európai országok hajlamosak közös trendeket követni, így például a „kockázatot jelentő" rétegek kiemelt kezelését, a gyakorlatban megvalósuló intervenció sokkal inkább a rendszer alapvető filozófiáján múlik, mint a nemzetközi trendeken. A kockázatelemzésen alapuló kockázatkezelést például másként értelmezik Angliában mind Skóciában: míg Anglia esetében a családban vagy a gyermekben rejlő kockázat fenyegetésként értelmezhető, amit lehetőség szerint kényszerítő jellegű és exkluzív eszközökkel kell megszüntetni, addig a skót rendszer a rizikófaktorokat információforrásként fogja fel, amit a gyermek érdekében kell felhasználni az eljárásban. McAra és McVie (2007) az Edinburgh Study eredményei alapján megjegyzik, hogy a beavatkozás elmaradása a lehető legjobb megoldás a kockázat megszüntetésére, még a visszaeső elkövetők esetében is. A holland és belga rendszer közötti különbség az intézményes reakciókból látszik a legjobban. Míg a holland rendszer formális és szigorú a kockázatot érintő startégiák tekintetében, addig a belga rendszer rugalmas és széles körben támogatja akár az informális megoldásokat is. Hollandiában nem valószínű, hogy egy akár csekély súlyú bűncselekményt elkövető fiatalkorú kicsúszhat a hatóságok kezei közül az általa képviselt kockázat értékelése nélkül. Minden pontosan kalkulált és címkézett. A belga rendszer a kockázatkezelés egy racionálisabb és humánusabb formáját választotta, ugyanakkor meg kell jegyezni, hogy ez a rugalmasság könnyen vezethet önkényes gyakorlathoz annak eldöntése terén, hogy mi teremti meg azt a kockázatot, amit már az

igazságszolgáltatásnak kell kezelnie. Végül, bár Finnország és Magyaroroszág szenteli a legkevesebb figyelmet a kockázatnak az itt felsorolt országok között, ám az alkalmazott kontroll tekintetében két végletet képviselnek: Finnország esetében évente csak néhány olyan eset van, amelyet elég kockázatosnak ítél a rendszer ahhoz, hogy a büntető igazságszolgáltatásban kezelje, míg Magyarországon a gyermekvédelembe való átterelés majdnemhogy lehetetlen, amíg a büntetőjogi reakció alkalmazható.

A nemzetközi szakirodalomban sokat említett kritika a jelenkori, fiatalokra vonatkozó igazságszolgáltatási rendszerekkel kapcsolatban, hogy egy jövőbeli cselekmény kockázatára helyeződött át a hangsúly a jelen cselekményeivel szemben. A kritika szerint a „rendes" felnőtté válás érdekében inkább a gyermekek szükségleteire kellene fókuszálni, a bűnelkövetővé válás megelőzését célzó beavatkozások helyett. Bár ez a vélemény fontos kritikát fogalmaz meg a kockázat-alapú beavatkozással kapcsolatban, ez még nem azt jelenti, hogy a kockázatkezelés elhagyását javasolja: a rizikófaktorok felismerése fontos támpontot jelenthet a hatóságok számára a beavatkozás természetének a meghatározásában, míg a szükségletek felsorolása segíthet az adott helyzetben alkalmazandó célszerű, személyre szabott módszer kijelölésében. A kockázat ezen megközelítése az „elsősorban gyermek, másodsorban bűnelkövető" filozófia mentén azt a gondolatot igyekszik népszerűsíteni, hogy azoknak a fiataloknak, akik bűncselekményt követnek el mindenekelőtt támogatásra van szükségük, nem pedig büntetésre. A cél azonban nem a segítség passzív befogadása, hanem az, hogy ők maguk is részt vegyenek a problémáik megoldásában és a számukra megfelelő út megtalálásában, aminek része a bűncselekménnyel való szembenézés is. Ez arra enged következtetni, hogy a fiatal elkövetők esetében célszerű egy összetett programban többféle probléma (életkörülmények, tapasztalatok, perspektívák, szükségletek) feldolgozásával számolni.

1.b. A Gyermekjogi Egyezmény követelményei alapján megállapított kulcsproblémák kezelésének értékelése

Tekintettel a részes államok jogrendszerei közötti jelentős különbségekre a Gyermekjogi Egyezmény és a hozzá kapcsolódó nemzetközi dokumentumok a jogi megoldások helyett a célzott eredményekre fókuszálnak. Annak eldöntése, hogy mely jogintézmények vezetnek majd el követelmények megvalósításához, a részes államok feladata. A nemzetközi szabályozással ellentétben a nemzeti jogalkotás általában inkább a jogi lehetőségekre koncentrál, mint az elérni kívánt eredményre magára. Annak ellenére így van ez, hogy a nemzetközi szabályozást kiegészítő dokumentumok kifejezetten azt kívánják meg az államoktól, hogy a tradícióktól és a jelenleg hatályos szabályoktól eltekintve a célszerűség jegyében alakítsák az igazságszolgáltatási rendszereiket. A konklúzió fő gyermekjogi problémákra adott válaszokat értékelő részében az egyes követelmények megvalósulásával, és az egyes jogalkotási megoldásokban rejlő kockázattal foglalkoztam.

Életkori határok

A rugalmas nemzetközi szabályozás adta lehetőségeket kihasználva az V. Fejezetben bemutatott, modellként használt országok egymástól lényegesen eltérő életkori határokat használnak a büntetőjogi „fiatalkor" meghatározásakor. Mind az alsó korhatárnak, mind pedig

a felnőttkor korhatárának meg kell felelnie a Gyermekjogi Egyezmény követelményeinek. A 2. táblázat a jelen disszertációban vizsgált hat ország közötti különbségeket mutatja be.

2.Táblázat. Életkori határok a fiatalkorúak igazságszolgáltatási rendszereiben

Ország	Alsó korhatár	Doli incapax teszt	Transzferszabály életkori határa
Belgium	18	-	16-17
Finnország	15	-	-
Magyarország	14	12-13	-
Hollandia	12	-	16-17
Anglia	10	-	10-17
Skócia	8		12-17

Az elemzett országok között Angliában a legalacsonyabb, 10 év, a büntethetőség alsó korhatára. Ez az életkor nem csupán a büntethetőség, hanem a felnőtt bíróság előtti felelősségre vonhatóság alsó korhatára is. Az alacsony korhatárt támadó komoly nemzetközi kritikák ellenére Anglia mindeddig visszautasította a korhatár felemelését. Skóciában ezzel ellentétben, bár a hivatalosan megállapított büntethetőségi korhatár a nyolcadik életév, a büntetőeljárában való felelősségre vonhatóság alsó korhatára 12 év, és a jogszabály az ezt megelőzően elkövetett bűncselekményekért való felelősségre vonást a tizenkettedik életév betöltését követően is kizárja. Az büntethetőség alsó korhatára Hollandiában 12, Finnországban 15 év. A legmagasabb korhatárt Belgiumban állapítja meg a jogszabály, amely szerint bűncsekelmény elkövetése miatt csak tizennyolcadik életévet betöltött személy vonható felelősségre. Ez természetesen nem azt jelenti, hogy Belgiumban nincs fiatalkorúakkal foglalkozó igazságszolgáltatás, csupán azt, hogy a rendszer jóléti szempontból közelíti meg a fiatalok bűnelkövetésének kérdését. Azokban az országokban, ahol viszonylag magas a büntethetőség alsó korhatára, így például Belgiumban és Finnországban, tipikusan nem csupán a döntéshozatal, hanem a bűnelkövetés problémáját kezelő intézmények is a jóléti rendszerben helyezkednek el.

Az ügy felnőtt bíróságra való áttételét megengedő ún. „transzferszabály" általában a 16-17 éves gyermekeket érinti. Ezek a kivételes szabályok komoly kockázatot jelentenek a gyermekek jogainak csorbulására, és a fejlődésüket negatívan befolyásoló jogkövetkezmények alkalmazására. Ez a kockázatvállalás nem lenne szükségszerű, amennyiben az országok inkább a súlyos bűncselekményt elkövető gyermekeket célzó megelőzés mellett köteleznék el magukat, amely nem csak a bűncselekményt magát, de gyermekek szükségleteit is figyelembe veszi.

Alternatív szankciók

Hollandia kétségtelenül vezető helyet foglal el a vizsgált országok között a rendelkezésre álló alternatív szankciók száma tekintetében. Az ún. igazságszolgáltatási viselkedési intervenciós programok elfogadásáért felelős bizottság (*Erkenningscommissie Gedragsinterventies Justitie*) megköveteli azt is, hogy a programok módszertanát folyamatosan értékeljék, ami a bíróság számára is információt nyújt az alkalmazni kívánt

intervenció alkalmasságáról a gyermek szükségleteinek kezelésére és a bűncselekmény feldolgozására. Más országok, például Finnország, csak korlátozott mértékben nyújtanak alternatívákat az igazságszolgáltatási rendszeren belül, ugyanakkor itt az igazságszolgáltatási eszközök alkalmazását lényegében csak a legsúlyosabb cselekmények elkövetőire szorítják. Ennek megfelelően az alkalmazott programok szinte kizárólag csupán ezt a csoportot célozzák. Belgiumban mind a szabadságvesztés maga, mind pedig annak alternatívái gyermekvédelmi intézkedésnek számítanak, kivéve abban az esetben, ha a fiatalkorú ügyét a bíróság átteszi a felnőtt bíróságra. Ennek megfelelően a szabadságvesztés alternatívái jóléti irányú intézkezések, amelyek az elkövető támogatását célozzák, vagy helyreállító igazságszolgáltatási célokat szolgálnak. Skóciában a Children's Hearingem való részvétel formális, az igazságszolgáltatásból való elterelésnek számít, ám nem feltétlenül garantálja a szabadságvesztés lehetőségének kizárását. A rendelkezésre álló lehetőségek között a pártfogófügyelet, a közösségi intervenció, illetve a helyreállító igazságszolgáltatás módszerei a leggyakrabban használt alternatívák. Angliában a szabadságelvonás alternatívái rendszerint a helyreállító igazságszolgáltatás módszerei, amelyek terén az elmúlt években az áldozat pozíciójának erősítése volt a meghatározó. Magyarországon mind az eljárás során, mind pedig a bíróság előtt lehetőség van a szabadságelvonás alternatíváinak alkalmazására, amelyek között a leggyakrabban alkalmazott eszköz a felfüggesztett szabadságvesztés.

Az alternatív szankciórendszer fejlesztésének eredménye Hollandiában látszik a legjobban, ahol a fiatalkorúakra kiszabott szabadságvesztés büntetések száma drámaian csökkent az elmúlt alig tíz év során (ld. V. Fejezet 2. Pont, Hollandia)

Szabadságelvonás

A nemzetközi szabályok alapján hat meghatározó kérdést vizsgáltam a fiatalkorúak szabadságelvonásának kérdéskörén belül: (1) a fiatalkorúak felnőttektől és nem bűnelkövető gyermekektől való elkülönítése, (2) a zárt intézmények fizikai jellemzői, (3) erőszak az intézményekben, (4) monitoring- és panasztételi mechanizmusok, (5) a családdal való kapcsolat, (6) szabadságelvonás, mint a lehető legrövidebb időrtartamban alkalmazott végső eszköz.

A fiatalkorúak felnőttektől és nem bűnelköveő gyermekektől való elkülönítése sok ország számára még mindig kihívást jelent, főként a rendőrségi fogdákban. Az elítélt elkövetőket általában fiatalkorúak számára kijelölt intézményekben helyezik el, ám egyes országokban, így például Hollandiában, jogilag nem feltétlenül tilos a felnőttekkel együtt való elhelyezés annak biztosítása érdekében, hogy a fiatal felnőttek a fiatalkorúakkal együtt is elhelyezhetőek legyenek. Finnország érdekes példát jelent arra, hogy az alacsony börtönnépesség is lehet problematikus: itt ugyanis a fiatalkorú elítéltek alacsony száma nem teszi lehetővé, hogy a külön intézményekben, vagy akár külön körletben helyezzék el őket a magánelzárás kockázata nélkül. Hasonló problémákkal találkozhatunk Szlovéniában is.

A zártintézetek fizikai kondíciójának minősége több faktor alapján értékelendő. A CPT nem csupán a rezsim szigorúságát és az épületek tisztaságát vizsgálja, hanem a rendszeres testmozgásra és intellektuális tevékenységre való lehetőséget is, amelyek kamaszkorban kiemelten fontosak. A javaslatok alapján a fiatalkorúak számára a 2-3 ágyas, tágas, WC-vel és mosdóval felszerelt, elegendő természetes fényt kapó cellák tűnnek ideálisnak. A kutatásban vizsgált országok nagy része teljesítette ezeket a feltételeket

Magyarország kivételével, amelynek intézményei az alapvető higiéniás követelmények megteremésével és a nagy cellákban tapasztalt túlzsúfolt állapotokkal küzdenek. Több országban, így például a jóléti Belgiumban, még mindig kihívást jelent a hasznos napi tevékenységek szervezése a fiatalkorúak számára.

Az fiatalkorúak intézeteiben a totalitárius rendszer sajátosságaiból adódóan az erőszak megnövekedett jelenléte is problémát jelent. A verbális és nem ritkán fizikai erőszak nem csupán a fogvatartottak között, hanem a személyzet és a fogvatartokkal relációjában is jellemző. A személyzet által alkalmazott erőszak általában a fegyelmezéshez kapcsolódik, míg a kortárs erőszak szerepe a fogvatartottak közötti hierarchia megteremtése. A vizsgált rendszerekben, és az ezekben található intézmények lényegében mindegyikében tapasztalhatóak hiányosságok a megelőzés terén, ezért a jól képzett és felelős személyzet jelenléte nagyon fontos volna. Általános vélemény, hogy a releváns tudással rendelkező börtönszemélyzet alkalmazása révén jelentősen csökkenthető volna az erőszak mértéke, ami a fiatalkorúak viselkedésére is pozitív hatással lenne mind az intézményekben, mind azokon kívül.

Az intézmények monitorozása és a panaszmechanizmus kiépítése a zártintézetekben a gyermekjogok tiszteletben tartásának és a sérelmek kivizsgálásának garanciáját jelenthetik. Minden vizsgált országban létezik a monitorozásra kijelölt intézményrendszer, amit tipikusan a nemzeti vagy regionális ombudsman és/vagy speciális intézményi szintű testületek működtetnek. A panaszmechanizmusok szintén megtalálhatóak minden országban, ugyanakkor a valódi, eljárási és a fiatalkorúak érdekeinek védelmében értelmezett hatékonyságukra vonatkozóan, illetve az ezeket övező bizalmat illetően további kutatásra volna szükség.

A családdal való kapcsolattartás joga a Gyermekjogi Egyezmény 9. cikkére visszavezethető követelmény, amely alapján minden, a szüleitől elszakított gyermeknek joga van arra, hogy „személyes kapcsolatot és közvetlen érintkezést tarthasson fenn mindkét szülőjével", beleértve a gyermek jogi eljárásokban való képviseletét is, kivéve akkor, ha ez ellentétes a gyermek legfőbb érdekével. Mind a bűncselekmény elkövetésével vádlott és ezért elítélt gyermekeknek meg kell adni a lehetőséget arra, hogy kapcsolatot tartsanak a családjukkal levél, telefon és látogatások útján (legalább egy látogatás 1-2 hetente), bár ez az eljárás ideje alatt korlátozható. Sok esetben a gyermekek is elhagyhatják a zárt intézeteket, hogy meglátogassák a szüleiket, felügyelet mellett vagy enélkül.

A szabadságelvonás, mint a lehető legrövidebb időtartamban alkalmazott végső eszköz nemzetközi szabályozása hasonló a büntethetőség alsó korhatárának meghatározásához abban az értelemben, hogy nem tartalmaz világos instrukciókat arra vonatkozóan, hogy mit jelent a „rövid" vagy „hosszú" időtartam a szabadságelvonás esetében. Ennek megfelelően az államok nem csupán eltérő hosszúságú büntetéseket, hanem eltérő szabályozási keretet is alkalmaznak ezen a területen. A végső eszközként történő alkalmazás terén Hollandia jó példát mutat az alternatív szankciók bevezetésével, amelyeket a rendszer alkalmaz is a szabadságvesztés alternatívájaként. Ennek biztosítására többféle jogalkotási eszköz alkalmazható. Hollandiában a jogszabály tiltja szabadságvesztés kiszabását a csekély súlyú cselekményekre, Skóciában a szabadságvesztés büntetésnek (de nem a szabadságelvonás más formáinak) szabtak alsó korhatárt, Magyarországon a 14 éven aluli elkövetők ellen csak büntetőjogi intézkedéseket lehet kiszabni. Nem érdemes osztályozni, hogy melyik szabályozás a legcélszerűbb ebben a

tekintetben, hiszen minden rendszerben más a „helyes” megoldás, és végeredményben gyermekjogi szempontól azt a rendszert fogják pozitívan értékelni a monitorozó intézmények ahol kevés gyermek szabadságát vonták el. Ebben a tekintetben az európai csúcstartó Finnország, ahol csupán néhány fogvatartott fiatalkorúról tudunk a statisztikák alapján – bár ezek a gyermekvédelmi javítóintézetekben élő gyermekekről nem szólnak. Bár a belga és a holland rendszerek a legtöbb fiatalkorút viszonylag megengedően kezelik, a 16 évnél idősebb elkövetők akár 30 év szabadságvesztésre is büntethetők a felnőtt bíróság előtt, míg Angliában és Skóciában akár életfogytiglanig tartó szabadságvesztés is kiszabható gyermekekre.

A csekély súlyú cselekményekre adott intézményes reakciók

A csekély súlyú cselekményekre vonatkozó kriminálpolitika módszerei a például Magyarországon tapasztalható megtorlástól (pl. rövid tartamú elzárás), a legmegengedőbb, a csekély súlyú bűncselekményekre adott intézményes reakciót elutasító stratégiákig terjednek. A legellentmondásosabb kriminálpolitikai eszközöket, az ún ASBO-kat (*Anti-Social Behaviour Order*) a 2003-ban Angliában elfogadott Anti-Social Behaviour Act vezette be a csekély súlyú cselekmények kezelésére. A szabályozás rengeteg kritikát kapott a jogvédő szervezetek, a nemzetközi emberi jogi testületek (pl. Gyermekjogi Bizottság), valamint az egyetemi szakemberek részéről. A szabályozást végül 2014-ben felváltotta egy új, kevésbé a megtorlásra, mint inkább az áldozat bevonására és a különböző hatóságok együttműködésére koncentráló törvény.

Bár a megengedő szabályozásra nemzetközi szinten több példa van, mint a fenti rossz szabályozási megoldásra, gyermekjogi kritika lényegében minden országgal szemben megfogalmazható. A holland szabályozás az igazságszolgáltatásból való elterelésre törekszik, a kutatások mégis azt mutatják, hogy az ennek feltételeként alkalmazott intervenció csupán azoknak a fiataloknak az esetében hatékony, akiknél egyébként is alacsony a kockázata az ismételt elkövetésnek, míg Belgiumban az önkényessé váló gyakorlat okoz problémát. Finnországban a gyermekek többségét informálisan a gyermekvédelembe terelik, ami ugyan szép igazságszolgáltatási statisztikákat eredményez, ám a valódi beavatkozás mértékét és természetét elrejti. A csekély súlyú cselekményekre vonatkozó kritikák több figyelmet igényelnének, mert alapvetően meghatározzák, hogy mit gondolunk a gyermekek viselkedéséről általában, és hogy hogyan kívánjuk a bűnözésre vonatkozó leckét megtanítani nekik.

Diszkrimináció

Valószínűleg nem túlzás azt állítani, hogy a tolerancia és a kulturális elfogadás a jelenkori, európai, fiatalkorúakra vonatkozó igazságszolgáltatási rendszerekben még nem alapvető tulajdonság. Ennek egyik jele az a gyakran említett jelenség, hogy bár van rá törekvés, a fiatalkorúak igazságszolgáltatási rendszerei mégsem tudják biztosítani az etnikai és nemzeti kisebbségek, valamint a bevándorlók többségi társadalom tagjaihoz hasonló kezelését. Az ezen csoportokhoz tartozó gyermekek sorsát az előítéletek és címkék pecsételik meg, amelyek a rendszeren belüli eltérő megítélést okozzák. A kiemelt rendőri figyelem, a kulturális érzékenység és az erre való törekvés hiánya, valamint a sebezhetőségre és áldozattá válásra való reakció hiánya mind összetevői ennek a problémakörnek.

Specializáció és képzés

Csak Belgiumban és Hollandiában vannak specializált rendőri csoportok, ügyészi szervek és bírák is a vizsgált államokban, bár Hollandiában az utóbbi csupán az eként kinevezett bírákra utal, nem pedig egy külön intézményre. A legtöbb országban, Magyarország és Finnország kivételével, létezik a bíróságok szintjén valamilyen specializácó. A két kivétel nem annyira meglepő annak ismeretében, hogy mely igazságszolgáltatási modelleket képviselik: sem az igazságügyi modellnek, sem pedig a bűnözéskontroll modelljének nem célja a gyermek szükségleteire való reagálás, legfeljebb az általános reakciók enyhítése az életkorra tekintettel. Érdekes módon a vizsgált országok egyikében sem képeznek kifejezetten ügyvédeket a fiatalkorú elkövetők ügyeiben való eljárásra, ami egy európai szintű hiányosságként is értelmezhető.

2. *Közép-Európa fiatalkorúakra vonatkozó igazságszolgáltatási rendszerei a közös történelmi múltból adódóan sok tekintetben hasonlóak, ugyanakkor a jelenkori arculatukat sokkal inkább a politikai akarat és az igazságszolgáltatás és gyermekvédelem közötti együttműködésre való hajlandóság határozza meg, mint a földrajzi elhelyezkedés.*

Csehország, Magyarország és Szlovénia közös történelmi gyökerei az Osztrák-Magyar Monarchia idejére nyúlnak vissza. A XIX. és XX. század fordulója nem csupán a viszonylagos politikai egység miatt volt fontos, hanem a kriminológia tudományterületének kialakulása és a fiatalkorúak igazságszolgáltatási rendszereinek létrehozása is ennek az időszaknak köszönhető. Az ebben az időszakban készített jogszabályok Szlovéniában 1929-ig, Magyarországon és Csehországban pedig az 1950-es évekig maradtak hatályban, az általuk lefektetett rendszer egyes elemeiben pedig máig tovább él. A második világháborút követően a politikai közösségnek egy új formája révén, a szocialista blokk tagjaiként a három ország jogalkotását jelentősen befolyásolta az orosz hatás. A cseh és magyar rendszerváltást követően, illetve Szlovénia Jugoszláviától való függetlenségével az országok ratifikálták (többek között) a Gyermekjogi Egyezményt és az igazságszolgáltatási rendszerüket, ezen belül pedig a fiatalkorúak igazságszolgáltatási rendszerét a saját elképzeléseik alapján kezdték el átalakítani.

A kutatás során a politikai átmenetet követő jogalkotás és kriminálpolitikai döntések révén kialakult fiatalkorúakra vonatkozó igazságszolgáltatási rendszereket vizsgáltam. A korábban meghatározott fő európai gyermekjogi problémákat az összehasonlítási lehetőségekre és az ezekben az országokban tapasztalt specifikus jogalkotási megoldásokra tekintettel más struktúrában vizsgáltam, mint a korábbi összehasonlítás során.

Érdekes módon a büntethetőség alsó korhatárának kérdése tűnik a legjelentősebb jogalkotási problémának ebben a régióban. Míg Csehország a tizenötödik életévben határozta meg a korhatárt, addig Magyarország a közelmúltban csökkentette 12 évre a súlyos, erőszakos cselekményeket elkövető gyermekek esetében, Szlovénia pedig 14 életévben meghatározott korhatár mellett egy kiegészítő, büntetéskiszabásnál alkalmazandó korhatár alkalmazásával igyekszik elérni, hogy 16 év alatt egy gyermekkel szemben se lehessen börtönbüntetést kiszabni. Ezek az életkori határok már önmagukban is sokat elárulnak a fiatalkorúak bűnelkövetésének értelmezése tekintetében tapasztalható különbségekről: míg Szlovénia

megtartotta a jugoszláv hagyomány szerinti életkori határokat, Csehország egy jólétibb rendszerben gondolkodva alakította ki azt. A két másik országgal ellentétben a Magyarországon a közelmúltban hatályba lépett új Büntető Törvénykönyv, valamint az ezt kísérő kriminálpolitikai törekvés kimondottan represszíven lép fel a fiatalkorúak (gyermekek) bűnelkövetésével szemben

Az életkori határok mellett sok más faktort is vizsgálni kell a rendszer irányultságának értékeléséhez. A közös, közép-európai jellemzők valamint az erre az elmúlt húsz év során építő változások tükrében a következő kérdések vizsgálatát tartom fontosnak a három ország fiatalkorúakra vonatkozó igazságszolgáltatási rendszereinek összehasonlítása során:

- A csekély súlyú cselekmények megítélését;
- A bíróságok specializációját és képzését, mint a gyermekbarát eljárás garanciáját;
- A bíróság büntetés-kiszabási gyakorlatának ismeretét.

A csekély súlyú cselekményekkel hagyományosan nem a büntető igazságszolgáltatás foglalkozik Közép-Európában, tekintettel a cselekmény „társadalomra való veszélyességének" hiányára. Az ilyen cselekményekre egy új, hatóságilag ellenőrzött magatartási kategória került kialakításra, ami meghatározott közigazgatási szerveket jogosított fel a cselekmények szankcionálására. Ez főként pénzbírság kiszabását jelenti, amennyiben ez megfelelő szankciónak tűnik. Ez a rendszer máig létezik Magyarországon és Szlovéniában, míg Csehországban a „szabálysértés" kategóriáját eljárásbeli elterelés váltotta fel. Ennek a magatartási kategóriának az volt a célja, hogy megelőzze a stigmatizációt, a szükségtelen büntetés kiszabását, valamint a büntetett előélet regisztrációját a csekély súlyú, nem erőszakos cselekmények esetén. Ez a megközelítés a magyar rendszerben 2010 óta megdőlni látszik. Ebben az évben ugyanis a fiatalkorú (14-17 éves) gyermekek esetében lehetővé vált a rövid tartamú elzárás alkalmazása ilyen cselekmények elkövetése esetén is. A csekély súlyúnak számító, de büntetőjogilag értékelt cselekmények mindhárom országban hasonlóképpen kerülnek megítélésre. Lehetőség van az eljárás feltételes és feltétel nélküli megszüntetésére, bár a feltételként megjelölhető tevékenységek köre eltér. Az ügyész általi elterelés mindhárom országban lehetséges. A három ország a helyreállító igazságszolgáltatás megítélése tekintetében is hasonlóságokat mutat: a mediáció létező, de ritkán alkalmazott igazságszolgáltatási eszköz.

A méltányos eljárás és a gyermekbarát igazságszolgáltatás alapvető garanciái még nem épültek be teljes mértékben a magyar és a cseh büntetőeljárásba. A nem nyilvános eljárás, a szülők és szociális intézmények bevonása, valamint a felnőtt eljárástól való elválasztás követelményei még nem kerültek beültetésre. Szlovénia ezzel szemben a legtöbb garanciát már beültette a saját jogrendszerébe. A három országban közös tulajdonság, hogy a rendészeti és igazságszolgáltatási szervek specializációjában még tapasztalhatók hiányosságok, ugyanakkor ezt a helyzetet nagyon eltérő módon próbálják orvosolni. A rendőrtisztek csak kivételes esetekben specializálódnak fiatalkorúak ügyeire, ami alól kivételt képez a gyermekbarát kihallgatás módszertanát ismerők és alkalmazók köre, az ügyészi szervezetrendszerben pedig az az általános, hogy bármilyen büntetőüggyel foglalkozhatnak. Nem jöttek létre különbíróságok sem: a bírák az általános szervezetrendszerben dolgoznak, ezen belül jelölhetik ki őket fiatalkorúak bírájának. Bár ez a kijelölés gyakran specializációként van feltüntetve, önmagában még nem jelenti azt, hogy a bírák ezen a területen releváns szaktudással rendelkeznének, csupán azt, hogy munkájuk során főként ilyen

ügyeket tárgyalnak. Csehországban a fiatalkorúak bíráinak kötelező az eljárás során megvizsgálni a fiatalkorú személyes és családi körülményeit, ami a gyermekvédelemmel és a pártfogó felügyelői intézménnyel való szoros együttműködést feltételez. Szlovéniában 16 év alatti fiatalkorúval szemben nem lehet börtönbüntetést kiszabni, ezért a fiatalkorúak bíráinak mindenképpen olyan alternatív szankciókat kell keresni, ami a gyermek szükségleteire megfelelően reagál. A bíróság által alkalmazható nevelő jellegű intézkedések nagy száma ebben a tekintetben sikerként könyvelhető el. Magyarországon a specializáció hiányát egyelőre semmilyen különleges intézkedés nem kompenzálja, annak ellenére, hogy a gyakorlatban dolgozó bírák véleménye szerint is szükség volna képzésre és speciális tudásra ezen a területen (Vaskuti, 2015).

A fent említett megközelítésbeli különbségekre tekintettel nem meglepő, hogy a három ország eltérő intervenciós technikákat alkalmaz a gyakorlatban is. Szlovéniában a gyakorlat viszonylag megengedő a fialatkorú elkövetőkkel szemben, ami alátámasztja azt a gondolatot, hogy itt a fiatalkorú bűnelkövetést inkább csínytevésként értékeli a rendszer. A fiatalkorúak túlnyomó része számára nevelő jellegű intézkedést rendel a bíróság, míg a szabadság elvonása, és ezen belül a börtönbüntetés, kimondottan ritkán alkalmazott szankció. Csehországban a végrehajtott börtönbüntetések aránya szintén alacsony, ami a jogszabályban rögzített ultima ratio jellegnek is köszönhető. Bár ez önmagában helyes megközelítés, tény azonban, hogy a fiatalkorúakkal szemben az ítéletek felében felfüggesztett börtönbüntetést alkalmaznak, az az alternatívák ismeretének hiányát és az előremutató, szükségletekre alapozó szankciók alkalmazásának elutasítását mutatja a bírósági részéről. Ez a szkeptikus hozzáállás a magyar rendszerben is megfigyelhető. Itt az ügyészi beavatkozás még ritkább, mint Csehországban, és a bírák kitartanak a klasszikus szankciók, így például a börtönbüntetés, vagy felfüggeszett büntetések alkalmazása mellett, a szintén alkalmazható közösségi büntetések vagy helyreállító módszerek helyett. Magyarországon gyakori a szabadságelvonással járó büntetések aránya, míg ennek alternatívái között szintén a felfüggesztett börtönbüntetések a legmeghatározóbbak.

A kutatás során azt is vizsgáltam, hogy a rendszerek eltérő nézőpontját alátámasztja-e a fiatalkori bűnelkövetés eltérő jellege a vizsgált három országban. A European Sourcebook adatai alapján (2010) a bűnözési számadatok olyan elenyésző eltérést mutatnak a három országban, hogy szinte irrelevánsnak tűnik (figyelembe véve, hogy Csehország csak 15 éves életkortól regisztrálja a fiatalkorú bűnelkövetőket, míg Magyarország és Szlovénia 14 éves életkortól). Arányaiban a legtöbb fiatalkorú elkövetőt Magyarországon regisztrálják. Az ISRD (Junger-Tas, 2012) adatai szerint a kamaszkorú populáció anti-szociális viselkedése vagy látens elkövetése további hasonlóságokat mutat. Magyarország és Csehország vezető pozíciót foglalnak el európai összehasonlításban a szerhasználat terén, amihez képest Szlovéniában visszafogott alkohol- és droghasználatról számoltak be a fiatalok. Ettől az egy tulajdonságtól eltekintve a közép-európai országok fiataljai hasonlóan visszafogott bűnelkövetési aktivitásról számoltak be mind a vagyon-elleni, mind pedig az erőszakos bűncselekmények tekintetében a nyugat-európai résztvevőkhöz képest.

Az összehasonlítás eredményeként úgy gondolom, hogy bár a nyugat-európai országokkal való szembeállítás során az itt vizsgált három ország mutat hasonlóságokat az intézményrendszeri és jogi felépítésében, illetve a nemzetközi gyermekjogok beültetése tekintetében, mégis lényegileg eltérő megközelítést képviselnek a fiatalkorúak

bűnelkövetésének értelmezésében. A szlovén rendszer alapvetően az intervenció és ezzel együtt a stigmatizáció és az ezzel okozott negatív következmények elkerülésére törekszik. A cseh rendszer a módosított igazságügyi modellbe illeszthető bele a legjobban, mert több elemében a jóléti intézkedésekre épít, és a gyermek szükségleteinek és legfőbb érdekének feltárására törekszik. A magyar rendszer, a disszertációban részletesen kifejtetteknek megfelelően a bűnözéskontroll modelljéhez tartozik, amelynek jellegzetessége, hogy megtorlás és kontroll által kívánja megelőzni a bűnelkövetést és az ehhez nem illeszkedő gyermekjogi elvárásokat figyelmen kívül hagyja.

3. Javaslatok a fiatalkorú elkövetők kontrollját szolgáló büntető igazságszolgáltatási rendszer magyarországi szabályozásának fejlesztésére

A fent ismertetett kutatás célja az volt, hogy az összehasonlító perspektíván kereszül bemutassa a fiatalkorú elkövetőkre vonatkozó igazságszolgáltatási rendszerek európai modelljeit, és az elméleti illetve gyakorlati szakemberek látókörét szélesítse, és betekintést nyújtson a fiatalkorúak igazságszolgáltatása terén adott lehetőségekbe. Az egyes rendszerek leíró vizsgálatára és összehasonlító elemzésére vonatkozó következtetések részletezését követően a disszertáció a magyar kriminálpolitika számára a fiatalkorúak büntető igazságszolgáltatásának fejlesztésére vonatkozó ajánlásokat tartalmaz.

1. *A nemzetközi szabályozás alapján a büntethetőség alsó korhatárának 14 éves életkorra történő visszaállítása és a kivételes szabály eltörlése jobban biztosítaná a szabályozás gyermekjogi követelményeknek való megfelelését.* A VII. Fejezet 2.1. pontjában kifejtettek alapján a büntethetőség alsó korhatára egy, a meghatározott életkort be nem töltött gyermekek büntethetőségének kizárását célzó minimum garanciaként értelmezendő. Azon túl, hogy ez egy nemzetközi kötelezettség, az életkori határ a fiatakorúak igazságszolgáltatási rendszereinek megalapozásában, és a világos szabályozás megteremtésében is fontos szerepet játszik. Az individualizációt a viszonylagos szabályozási rugalmasságnál jobban szolgálják a következő megoldások:
    a) A szabadságelvonás alternatíváinak körét bővítő intézkedések, többek között olyan programok létrehozása, amelyek egy meghatározott életkori csoport problémáira és szükségleteire reagálnak.
    b) A rendőrség, az ügyészség valamint a gyermekvédelem közötti kooperáció megteremtése az büntetőeljárásból való sikeres elterelés, és a gyermek legfőbb érdekének meghatározása érdekében.
    c) A bírák és az ügyészek megfelelő képzése és felkészítése annak eldöntésére, hogy a fiatalkorú tulajdonságai és életkörülményei alapján mely reakció a megfelelő a számára.

2. *Egy független fiatalkorúak bíróságának, illetve specializált ügyészségi csoportoknak a megteremtése jelentős előnyökkel szolgálna mind a szakemberek téma iránti elkötelezettségének megteremtése szempontjából, mind pedig a bíróság előtt megjelenő gyermekek jövője szempontjából*. A specializáció megfelelő színvonalának megteremtése érdekében egy különbírósági szervezet felállítása, valamint az emellett

működő ügyészségi szervezet kialakítása tűnik a legmegfelelőbb megoldásnak. A különbíróság hatásköre a belga bírósági megoldáshoz hasonlóan a fiatalkorúak büntetőügyein túl családjogi és gyermekvédelmi ügyekre is kiterjedhetne, illetve a gyermekekre vonatkozó szabálysértési kérdésekben is döntést hozhatna. A felnőttek büntető igazságszolgáltatási rendszerétől való elválasztás lehetővé tenné speciális előképzettség előírását a fiatalkorúak bírái számára (pl. fiatalkorúak büntető igazságszolgáltatására vagy családjogra való specializáció a felsőfokú képzésben), és bíróságon dolgozók számára speciális továbbképzési programokat tenne lehetővé. A felnőtt bíróságoktól eltérő helyszín jó lehetőséget teremtene a gyermekbarát tárgyalótermek és kihallgatószobák kialakítására, amelyekben a bíróság tekintélye helyett inkább az együttműködés fontosságán lenne a hangsúly.

3. *A bíróság jogi korlátozása a szabadságelvonással járó intézkedések alkalmazásában, főként a fiatalabb fiatalkorúak esetében, mind a jogalkotót mind pedig a jogalkalmazót a szabadságvesztés alternatíváinak keresésére és alkalmazására ösztönözné*. A szabadságelvonás alsó életkori határának megszabása, és ezzel a szabadságelvonással járó büntetés alkalmazásának megtiltása például a tizenhatodik életévüket be nem töltött fiatalkorúakkal szemben több pozitív következménnyel is járhat. Mindenekelőtt megóvná a fiatal elkövetőket a börtönbüntetés negatív hatásaitól és következményeitől. Másrészt a börtönbüntetés kizárása rákényszerítené a bírákat, hogy a felfüggesztett börtönbüntetés helyett más, alternatív büntetés vagy intézkedés alkalmazásában gondolkodjanak. A szabályozás bevezetése önmagában is megkívánná az alternatív szankciók körének kiszélesítését és az alkalmazott módszertan fejlesztését, ami maga után vonná az individualizációra való lehetőséget és a bírák képzésének ezirányba történő elmozdítását. Úgy gondolom, hogy mind a börtönnépesség csökkentésének kérdése, mind pedig az alternatív szankciók fejlesztése a jogalkotáson múlik. Amennyiben a jelzett irányba lépéseket tesz a jogalkotás, az kihívást jelenthet az igazságszolgáltatásban dolgozó szakemberek számára.

4. *A fiatalkorú elítéltek pártfogó felügyeletének a gyermekvédelembe való áthelyezése fontos lépés lehetne a szükségletekre alapozó rendszer kialakításának irányába.* A fiatalkorúak pártfogó felügyeletét a Pártfogó Felügyelői Szolgálat szervezi Magyarországon. Ennek az intézménynek a feladata a felnőttek és fiatalkorúak pártfogó felügyeletének végrehajtása, a mediáció szervezése büntetőügyekben, az áldozatvédelmi feladatok ellátása, így például jogi és pénzbeli segítség nyújtása. A fiatalkorú elkövetők egy speciális csoportot képeznek a fenti szolgáltatásokkal megcélzott kliensek között, akikkel kapcsolatban különleges szükségleteikkel kell számolni mind jogi (a fiatalkorú elkövetőkre vonatkozóan ismerni kell nem csak a büntetőeljárásban releváns jogszabályokat, hanem gyermekvédelmi és közoktatással kapcsolatos szabályokat is), mind pedig élettani (pl. tekintettel kell lenni az esetleges magatartási problémákra, vagy a kamaszkorral együttjáró fokozott impulzivitásra, a családtól való függésre) szempontból. Ezen tulajdonságokra tekintettel a fiatalkorúak igazságszolgáltatása az igazságszolgáltatási rendszer és a gyermekvédelmi rendszer

határán helyezkedik el.

A kutatásom során több példát láttam olyan intézményrendszeri megoldásokra, amelyekben a gyermekvédelmi szakértelmet a fiatalkorúak igazságszolgáltatásába integrálták, hogy így biztosítsák a gyermekközpontú és szükségletekre reagáló támogatást az igazságszoláltatási kontroll helyett. Úgy gondolom a pártfogó felügyelői feladatok áthelyezése a gyermekvédelembe előmozdítaná az „elsősorban gyermek, másodsorban bűnelkövető" filozófia érvényesülését Magyarországon is. A párfogó felügyelők, akik egy kimondottan gyermekeket támogató szervezetben dolgoznak, könnyebben kapcsolatot teremthetnének a jóléti rendszer más résztvevőivel annak érdekében, hogy feltárják a gyermek szükségleteit és legfőbb érdekét. Az „átlagos" kamaszokorú gyermekek problémáira vonatkozóan is tapasztalatot szerezhetnének, és tágabb képet kaphatnának a célcsoportról. Álláspontom szerint ez az intézményi reform feloldaná a kontrollra koncentráló magyar rendszer szigorúságát, jóléti irányba mozdítaná el az alkalmazott intézkedéseket, és segítene az alkalmazott módszertan felfrissítésében is. Egy gyermekek támogatására kijelölt intézményrendszerben egy ilyen változás ideális esetben kizárólag a vonatkozó gyermekjogi előírások mentén valósulhatna meg.

A doktori disszertáció témájához kapcsolódó publikációk

a. Folyóiratban publikált tanulmányok

- Intézményi elhelyezés, mint a deviáns gyermekek büntetése Finnországban a magyar szabályozás tükrében. *Themis*, 2013/1, pp. 199-214.
- A deviáns gyermekeket érintő jogalkotás változásai Magyarországon. *Themis* 2013/3, pp. 297-316.
- Volt egyszer az élet David P. Farrington, a Stockholm Criminology Prize 2013. évi díjazottjának. *Belügyi Szemle*, 2012/9 pp. 5-25.
- A pártfogó felügyelet szerepe a bűnmegelőzésben, különös tekintettel a jogintézmény tervezett változásaira. Társszerzők: Kerezsi Klára, Kovács Krisztina, Szabó Judit. *Kriminológiai Tanulmányok52*, 2015, pp. 148-191.

b. Gyűjteményes kötetben publikált tanulmányok

- Gyermekbántalmazás és prevenció az Egyesült Államokban. Tanulmány az *Eötvös Loránd Tudományegyetem Állam és Jogtudományi Karának PhD Konferenciakötetében*, II. könyv. 2012, pp. 65-77.
- A büntetésig és vissza: a fiatalkorúak büntető igazságszolgáltatásának változásai Hollandiában. Tanulmány a *DOSZ PhD Konferenciakötetében*, 2013, pp. 257-266.

c. Egyéb

- Recenzió: John J. Rodger: Criminalising Social Policy: Anti-social and Welfare in De-civilised Society. *Belügyi Szemle*, 2012/9, pp. 134-143.
- Recenzió: Rolf Loeber – Machteld Hoeve – N. Wim Slot – Peter H. van der Laan (eds.): Persisters and Desisters in Crime from Adolescence into Adulthood. *Belügyi Szemle*, 2014/2, pp. 144-152.

d. Nemzetközi publikációk

- Children's rights challenges in the juvenile justice of Hungary. *AIMJF Chronicle* 2015/1